Thornton on Commercial Law.

SECOND EDITION.

PRINCIPLES

OF

COMMERCIAL LAW

A TREATISE

FOR THE USE OF

STUDENTS IN BUSINESS COLLEGES, AND OTHERS:

BY

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Preface to First Edition.

THIS work is offered to the public in the belief that there is a demand for a book on commercial law which can be read and understood by the average student. Newness of *method* has been attempted, rather than of *matter;* and it is believed that the well recognized truths of the laws of commerce have been here stated in such shape as both to interest and instruct. This treatise claims the advantage of relieving a technical subject of dryness; of rendering the study of commercial law interesting, without trying to make every man his own lawyer.

Preface to Second Edition.

THE success which has attended the first issue of this manual induces the author to put forth a new edition, with such changes as further experience has suggested. The purpose of the work is to state the first principles of commercial law in a plain, intelligible and attractive manner. The student, in rightly using it, will gain an enlarged and correct notion of those transactions in which he expects to be employed ; while the business man or woman, pursuing a similar plan, will come into possession of a large store of practical knowledge, which others acquire only in fragments, and usually at the cost of a law suit, or heavy financial loss. In this age, no one who is or may be engaged in business of any kind can afford to be ignorant of his legal rights and responsibilities.

THE ELEMENTARY PRINCIPLES OF COMMERCIAL LAW.

CHAPTER I.

CONCERNING AGREEMENTS.

Business transactions consist chiefly of buying and selling, borrowing and lending, employing and serving, carrying merchandise and paying for the carriage of it. They include, also, all matters of detail which are incidental to such dealings; as, for instance, the statement of an account, the making of a note, the acceptance of a bill, the signing of a receipt, the cancellation of a debt. The main transactions of commerce consist of what the law calls agreements. The incidental transactions are connected with those agreements, and are necessary to carry them out. This being the case, it follows that a discussion of the true nature of an agreement is a proper introduction to the study of commercial law.

In a legal sense, the word agreement means *a concluded bargain.* There is a popular saying that it takes two to make a bargain, which suggests the first principle of a valid and binding agreement. There must be a correct understanding, by each party, concerning that which is bargained for or about. The persons who make the bargain must intend the same thing in the same sense. In the language of the law, *their minds must come together,* else there can be no agreement between them. If there has been an honest misunderstanding, on either side, as to any essential part of the bargain, there is no agreement, and neither party is bound.

* * * A certain man had a gun, which another man wanted to buy. The owner asked thirty-five dollars for it; but, in stating the price, he spoke indistinctly, and the intending purchaser thought he said *twenty-five* dollars. When the time came to deliver and pay for the gun, the parties disputed about the price. Each honestly had in mind a different amount, and the sale was not made. In this case, inasmuch as the parties had not understood the matter under consideration in the same manner, there was never any real agreement between them. Their minds had not met. They had not understood the same thing in the same sense. Consequently, the person who offered to sell the gun was not bound to sell it, nor was the other bound to buy it.

Of course, a man is never allowed to escape the consequences of his bargain, by merely pretending that he misunderstood the terms of it. It rarely happens that there is room for any serious doubt on this point; but, if either party to a proposed bargain can show that there was a substantial misunderstanding, which did not arise from his own foolishness or dishonesty, he can properly deny that any agreement exists.

The notion of a concluded bargain implies that the transaction amounts to more than a mere offer. There must be a

definite proposal, followed by an unqualified acceptance. If, instead of this, the proposal is followed by a counter-proposal, the latter must be accepted by the party who made the first proposal, or there is no agreement. If the proposal is accepted with a modification, the modification has to be accepted by the person who made the former proposal, else there is no agreement.

* * * Two persons were negotiating for the sale and purchase of a wagon. The owner of it said to the other, "You may have the wagon for forty dollars." The other replied, "I will take it at that price, provided you will deliver it at my wagon shed on my farm." Up to this point, there was no agreement, because the bargain had not been concluded. The first man said, "Well, that would cost me five dollars, and I cannot afford to do it; but I will divide the difference with you, and deliver the wagon, as you propose, for forty-two dollars and fifty cents." The purchaser consented to this, and at that moment the agreement was complete; the bargain was concluded. Neither party then had the right to withdraw from it, without the consent of the other. The seller was bound to deliver the wagon, and the buyer to receive and pay for it.

It is further necessary, to fulfill the legal notion of a concluded bargain, that the transaction shall have the character of *mutuality*. This means that it must not be one-sided. If it is so, it is not an "agreement" in the sense in which this word is used in law. In other words, if all the benefit is to go to one party, and the other is to get nothing, the transaction amounts to a mere promise; and a person who makes such a promise is at liberty, so far as the law is concerned, to change his mind and refuse to keep it. If, however, he should fulfill the promise, and put the other party in actual possession of the thing promised, he cannot then change his mind and take it back.

* * * If I tell you that I will make you a present of a pair of new shoes on Tuesday of next week, and you agree to accept them, I am not obliged to provide you with the shoes, however wrong it may be on my part to make the promise, and then break it; but, if I once put you in possession of the shoes, I can neither take them back without your consent, nor charge you with the value of them.

Note the difference between the last illustration given, and that in which the two men were bargaining for the sale and purchase of a gun. In the case of the gun, there was a misunderstanding for which no one was responsible, so neither man was bound to stand by his offer. In the last illustration, there was a *thorough mutual understanding;* but the bargain was entirely one-sided. In the language of the law, the promise I made, to give you a pair of shoes, was "without consideration." This word *consideration* means a recompense or equivalent. If the bargain had been that you should copy a letter for me on the typewriter, and that I should furnish you a pair of new shoes for this service, there would have been a "consideration" for my promise. In that case, if you copied the letter, and I then declined to supply the shoes, you would have a cause of action against me.

It is not necessary that the values should be equal, to make the agreement binding. In the last case, a pair of new shoes might be reasonably worth more than the work on the typewriter; but I would not be permitted to object on that account. The rule would be the same, though the discrepancy in the values were much more striking. If a man has made a bargain with his eyes open, he cannot lawfully decline to perform his part, on the ground that he thinks it bad for himself. If he made it under compulsion, or if the other party deceived him into making it, the case would be different.

Until the bargain is concluded, he who makes the offer is at liberty to recall it. Before that point is reached, there is no agreement, no meeting of the minds, no legal obligation on either side.

* * * At an auction sale, the drop of the hammer, or the word "gone," or "sold," used by the auctioneer, marks the point of time when the bargain is concluded. Mr. M. had bid $75 on an oil painting, and his bid was the highest. The auctioneer tried to get further bids, and at length said, "going to Mr. M., going,"--but before he pronounced the word "gone," Mr. M. said, "I withdraw my bid." This he had a right to do, and he could not be compelled to take the painting.

Again, the rendering of a gratuitous service is not in the nature of a bargain, and no charge for such service can be properly made. The person accepting it may pay of his own accord; and, if he voluntarily promises to pay, he can then be made to do so, but not otherwise.

* * * (1) A storekeeper was away from home. During his absence, a fire broke out close to his place of business. Some of his neighbors removed his goods, and saved them from destruction. They could not, in an action at law, recover the value of their services; but, if the merchant afterwards stated that he would compensate them, then a reasonable recompense could be enforced.

* * * (2) A. owes his tailor $45. Of his own accord, B. goes to the tailor and pays the bill. B. cannot, in the absence of a promise by A., recover the $45 from him.

The minds of the parties, as we have already seen, must come together, or there is no agreement; and, when their minds do come together, the bargain is concluded. That point being reached, neither party has a right to withdraw, or to change the terms of the agreement in the slightest manner, without the consent of the other. This being the case, it is

desirable that we should be able to fix the *exact moment* at which the minds meet. When the parties talk with each other face to face, there is usually little difficulty in ascertaining this point of time, because we have only to ask when the offer was accepted; or, if there have been proposals and counter-proposals, when the final offer was accepted.

When an offer is made and accepted by mail, a curious question presents itself. Do the minds meet when the person addressed signs his name to the letter in which he accepts the offer, or when he mails it, or when the other receives it? This problem has received much attention, and it has been decided that the bargain is concluded when the letter accepting the offer is deposited in the postoffice. Thus, in a well known case, an insurance company proposed to insure a house, on certain terms. The owner mailed a letter to the company, in which he accepted the offer. The house was burned before the company received the letter in the regular course of the mail; and the Supreme Court of the United States, which heard the case, held that the bargain was complete, and that the company must bear the loss. The person receiving an offer by mail is not obliged to reply immediately, but has a reasonable time to consider the matter; although, until he mails his reply, or otherwise signifies his acceptance of the offer, the person making the offer may withdraw it. Sometimes, the offer is accompanied with a condition that it must be accepted, if at all, within a certain period; and then, of course, the condition must be observed. There have been instances in which one man has written to another, proposing a certain bargain, and saying that he would treat the offer as

accepted, unless he received a reply in so many days; but silence, in such a case, is not sufficient to express consent. Offers relating to business should never be framed in this manner.

Any person may enter into a binding agreement, who is not under some definite legal disability. We need not here raise the question as to whether a lunatic can be a party to a contract. The law in relation to minors is of much greater importance. A minor is a person who has not attained full age. The period of full age, in most of our states, is twenty-one years, in case of a man, and eighteen years, in case of a woman. Great caution is desirable in commercial dealings with a minor. In the eye of the law, he has not sufficient discretion to engage in mercantile dealings, and is liable to become the victim of persons who know more than he does. On this account, the law affords him a large measure of protection. It is not safe to lend money to a minor, because, if he squanders it, the lender cannot recover at law. Neither is it safe to supply him with goods on credit, because, unless these things are necessary for his maintenance, he cannot be made to pay for them. If a young man of nineteen or twenty were keeping a store, and wanted to get a supply of goods on credit, the only safe plan open to the seller would be to induce some responsible person either to become the buyer, or to guarantee the payment of the account.

Generally speaking, it is not entirely safe to make mercantile agreements with married women, and such dealings with them ought to be conducted with great care; but married women, whose husbands have deserted them, are allowed to

carry on business on their own account. As to these matters, the local statutes must be consulted, and the facts of each case considered.

Where an employer is represented by a clerk or agent, an agreement made in his name by the clerk or agent, within the scope of his employment, will bind the employer, because he has engaged the clerk or agent for the very purpose of representing him.

* * * A clerk in a furniture store has instructions to sell a certain bedstead for $50. He makes a mistake, and sells it to a customer for $40. The storekeeper cannot charge the customer with anything more than $40. If the transaction displeases him, he must settle the difficulty with his clerk. If the clerk had fraudulently agreed with the purchaser to let down the price, and the storekeeper could prove it, then he could charge the purchaser with the full value. If the price named by the clerk were outrageously low, as $10 instead of $50, this might be enough to put the purchaser on his guard, by suggesting the existence of a mistake; and, in such a case as this, the storekeeper could decline to deliver the goods; or, if they had been delivered, he could demand them again, unless the purchaser would agree to pay a reasonable price.

The question arises, whether a mercantile agreement ought to be in writing, and whether a writing is required by law. There are only a few instances in which the law positively requires any writing; and of these, only four need be noticed, because the others arise out of peculiar circumstances. A writing is positively required (1) in case of agreements which are not to be fully performed within a year from the time of making them; (2) in case of bargains wholly unperformed, for the sale of anything for $50 *or more; (3) in case of agreements for the sale of land, or for leases*exceeding one year; (4) in case of the promise of one man to become responsible

for the debt of another. These provisions originated in an English statute, called *The Statute of Frauds*, which was passed more than two hundred years ago. They have been found so useful that this statute has been re-enacted throughout the United States, and in the English colonies. As to the amount of $50, and the period of one year, marked here with a star *, there may be local differences; but the general purpose of this great statute is the same everywhere.

If people make agreements of the kinds now specified, without any writing, *and keep them*, it is plain that all will come out right; but a man who makes such bargains without any writing is at liberty, so far as the law is concerned, to disregard them if he chooses.

* * * (1) You meet a farmer at the cross-roads, and agree to buy his horse for $55, but no memorandum is signed. Next day, you go to his house and offer him the money; but he says he has changed his mind, and you shall not have the horse at that price. If you now bring an action against him, he can defeat you by simply denying the existence of any writing concerning the matter. Had the agreed price been $49, the case would have been on your side.

As to this question of sales to the value of $50 and more, there are methods of dispensing with a writing, which we will discuss in a subsequent chapter. It is enough at present to remember this as one of the four cases in which the law usually requires a writing; and the writing must be subscribed or signed by the party who is to be charged by means of it, or by his agent or clerk.

* * * (2). A minor was keeping a store, and wanted to procure a supply of merchandise on credit. The seller, however, declined to deal with him, except for cash, and so the parties were at a dead-lock. In

order to remove the difficulty, the young man's uncle said to the wholesale dealer, "If my nephew does not pay you for these goods, I will pay you myself; let him have them." There was no memorandum in writing, but the goods were delivered in consequence of the promise. The nephew, unfortunately, became insolvent; and the uncle, on being requested to pay, said he would not do so. The seller of the goods went to his lawyer, to instruct him to bring an action against the uncle; but he soon discovered that such an action could not be successfully maintained, because the uncle had signed no writing.

Of course, it was not right of the farmer to cancel his bargain as to the horse; and it was grossly dishonest on the part of the uncle of the minor to promise, and then to refuse fulfillment of his promise; but the experience of men has proved the wisdom of the law on this point. A writing is required to protect men from the effects of haste, forgetfulness, imposition and falsehood; and the general benefit of the enactment far outweighs any occasional inconvenience which may result from it.

It is not necessary, even in concerns of great importance, to draw up formal articles of agreement. The Statute of Frauds, where it requires a writing, does not say what shape the writing must assume. Transactions which involve large sums of money are frequently negotiated by letters and telegrams; but, when the arrangement in question involves many points of detail which may be productive of dispute, the regular and best plan is to prepare articles of agreement.

Although there are numerous cases, of various kinds, in which the law does not require a writing, yet the absence of any writing may be a fruitful source of danger. Human memory is treacherous, and a memorandum serves to make the agreement certain, and tends to prevent misunderstanding.

The safe rule is this: *Whenever a bargain is not to be entirely performed at once, and its consequences are important, let it be reduced to writing; and, if it involve such details as may give rise to differences of opinion, have it reduced to writing, even though it is to be performed without much delay.* The observance of this rule may save a great deal of trouble.

* * * A merchant employed a bricklayer to build a brick wall for him. Nothing was expressed in writing. The work went on, and there was no dispute as to the height and length and width of the wall, but there was a very annoying dispute about the quality of the brick, and the time in which the work should be done. The wall was finally completed, but each party thought the other had treated him unfairly, and neither was satisfied. As a result of this, the merchant will not employ the bricklayer again, and the bricklayer will buy no more goods from the merchant. An agreement, properly drawn up, would have prevented all this vexation and ill will. The case was not one of those in which a writing is positively required; it did not involve a sale of goods, but only so much work. It is clear, however, that the parties would have acted wisely, if they had expressed their bargain in writing.

Articles of agreement ought to embody the result of all previous negotiations on the subject-matter. There may have been offers, and counter-offers, and modifications of proposals which were already made; but the written agreement is intended to express the final intention of the parties, and the law will so regard it. In case of controversy, all the circumstances may be described, for the purpose of throwing light on the meaning of the document; but evidence will not be admitted to prove that the parties meant something different from what they wrote down. Therefore, it is very desirable to draw up the agreement accurately. It ought to be particularly clear as to the names of persons and places, the time at

which anything is to be done, the quantity and quality of goods or materials to be supplied, the price to be paid, and the time and mode of payment.

When a bargain is made with reference to any special line of business, and there is a well-known custom of trade which prevails in that business, it is not necessary to mention that custom in the agreement, because it will be understood that the bargain was made with reference to the custom. There may sometimes be an advantage in mentioning it, so as to prevent any dispute; but the custom, if it be a universal one in the particular trade, or one well recognized in the place where the bargain occurs, is a part of the contract, and the parties can only set it aside by using words which positively exclude it.

* * * It is customary in the barley trade to deliver barley in sacks. A certain purchaser bargained for fifty thousand bushels of barley. When the time came for him to receive and pay for it, the seller wanted to deliver it loose. The purchaser said he must have it in sacks; the seller replied, in effect, that the agreement said nothing about sacks, and therefore did not call for sacks. This controversy went to the Supreme Court of the United States, and it was there decided that the seller was bound to supply the barley in sacks.

Inasmuch as the custom existed, the parties should have stated in their agreement that this invoice of barley was to be delivered loose, if such was their intention. As a matter of fact, the seller, in the case quoted, was trying to take an unfair advantage of the buyer, which the law did not allow.

It is not a very hard matter to draw up ordinary articles of agreement, if one knows exactly what the bargain is, and observes the rules already laid down. The great thing is to

say precisely and fully what is meant. Persons who are not lawyers should avoid the use of legal phrases. A country schoolmaster in England once prepared a will for an old lady. In course of time, the will had to be laid before a very eminent judge. He said that the schoolmaster had made the old lady use "all the drag-net words of conveyancing"—such was his phrase—"without understanding any of them." In writing an agreement, it is usually better to speak of persons by their names than to call them "the said party of the first part," and "the said party of the second part."

It is a wise precaution to make and sign as many copies of the agreement as there are parties to it, so that each one may keep a copy. Thus, if there are two parties, the agreement should be "executed in duplicate;" if three, "in triplicate," and so on.

It is not legally necessary that an agreement should be either sealed or witnessed. The only documents which require seals and witnesses are deeds and wills. It may give more apparent importance to an agreement, to have it witnessed. If one party dies, proof of the agreement may be thus made easier. In an extreme case, the existence of witnesses may prevent a party who signed the document from denying his own signature; but the legal effect of the writing is unaltered by the attestation. The seal does make some difference, because it prolongs the period during which an action at law can be brought, if the agreement is broken. As a general rule, the statutes provide that an action can be brought on an unsealed instrument within six years from the date of the breach, while the period is ten years, or, in some

states, more, in case of a sealed document. By "the date of breach," is meant the time when the agreement is broken, and when the party who breaks it becomes liable to an action. Most people, if they bring an action at all, do so without any prolonged delay; so that this question of time, as to the six or the ten years, is not very frequently raised.

In most cases, the law cannot make men perform their agreements literally. This is particularly true with regard to commercial transactions. The ordinary remedy of the injured party is to bring an action, and recover damages. The usual way of ascertaining the amount of damages is to submit the matter to the verdict of a jury, though now and then parties can be induced to save a lawsuit, and refer the controversy to arbitration. There are some peculiar cases, in which a court of equity will make men do what they have agreed to do; but these instances, involving what is known as "specific performance," do not relate to ordinary mercantile contracts. The usual method of securing the performance of an agreement is by the execution of a bond; and this brings us to the topic of the next chapter.

CHAPTER II.

CONCERNING BONDS.

A bond is a writing under seal, containing a promise to pay money. It is called a *bond*, because it *binds* the maker of it. He is styled in law the *obligor;* and the person in whose favor it is made is styled the *obligee*.

The way in which a bond binds the maker is this: he enters into an agreement of some kind, and executes a bond in which he undertakes to pay a certain sum of money, in case he fails to perform his part of the agreement. Let us examine the working of this instrument.

* * * Adam Stuart, of Washington county, wants a well dug on his farm, and John Day agrees to dig it. (This is such an agreement as ought to be expressed in writing, though the law does not require it.) Day is called off on a more important job, and neglects this one altogether. Stuart waits what he considers a reasonable length of time, and then determines that he will take legal proceedings against Day, if he can, on account of his breach of contract. With this intention, he goes to consult his lawyer, and relates the facts in the case. After hearing what Stuart has to tell him, the lawyer says: "Well, you have a cause of action against Day, it it true; but you are not likely to get much damages, and it will probably cost you more to sue him than the thing is worth." Stuart thinks the matter over, and concludes not to go to law. If he had made Day give a bond, the well would, in all likelihood, have been dug; but how ought such a bond to be expressed?

The straight-forward way would perhaps be this: *Unless* I, John Day, dig a well of such a kind and size, in such a place,

by such a time, for Adam Stuart, I will pay Adam Stuart Three Hundred Dollars. JOHN DAY. (SEAL.) At such a date, in such a place."

There is no reason to suppose that a bond like this would not be valid; but bonds are not thus written. The form which has been used for several centuries first states *an indebtedness*, and afterwards *a condition* upon which the indebtedness is to be discharged. The form, in this particular case, would run as follows:

"*Know all Men by These Presents*, that I, John Day, am held and firmly bound unto Adam Stuart, of Washington county, State of———, in the sum of Three Hundred Dollars ($300) to be paid to the said Adam Stuart, his executors, administrators, or assigns: for the payment of which I bind my heirs, executors, and administrators firmly by these presents.

Now the condition of this obligation is such, that if the said John Day shall, in a workman-like manner, dig a well four feet in diameter, and of a sufficient depth for the purpose of drawing water, at a place now marked out for the same near the north-east corner of the farm of said Adam Stuart, before the twenty-sixth day of June, A. D. 189--, according to an agreement made by them in writing on the fourth day of January, A. D. 189--, then this obligation shall be void: otherwise, it shall remain in full force.

Witness my hand and seal, at ----------, ----------, on the eighteenth day of----------, 189--.

Executed in the presence of
THOMAS GRAHAM,
PAUL RENWICK.

JOHN DAY, [SEAL.]

The mentioning of executors and administrators means that the bond is to hold good against the estate of John Day, and in favor of the estate of Adam Stuart, should either or both of them die; but this result would follow, even if these words were left out. An *executor* is a person who is named in a will, to settle up the estate of the person who makes the will, to pay his debts, and distribute his property. An *administrator* has the same duties to perform, but he is appointed by the Court, and is not designated by the person who makes the will. A person's *assigns* are those to whom he sells out, or transfers his interest. His *heirs* are those who inherit his real estate, unless he wills it away from them.

In the case stated, let us suppose that John Day goes to work and digs the well, and does everything precisely according to the agreement, except that he is three weeks late in completing his undertaking. According to the strict terms of the bond, he now owes Adam Stuart $300, because he has not done exactly what he agreed to do; but it would be exceedingly unjust if he were made to pay all this money for a trifling default. In such a case, he will not be compelled to pay the $300, but only to compensate Adam Stuart for any loss which the delay may have caused him. To use technical language, John Day will be "relieved against the forfeiture" of the $300. Generally speaking, when a thing shocks that sense of justice which the Creator of men has planted in the human heart, there is some way of relief, either at law or in equity; but one has to know the law exceedingly well, before he can say in all cases exactly how that relief may be obtained.

Bonds are frequently given to secure the performance of agreements to convey real estate, or to build houses, or to be

honest and faithful in the discharge of responsible duties. Bonds are usually required by law when any one undertakes a public office, or a position of trust under the appointment of a Court of Justice. Thus, administrators give bonds, and trustees, and guardians, and receivers; also, postmasters, and collectors of customs, and United States marshals; also, sheriffs, and county treasurers, and notaries, and clerks of courts. Brewers, distillers and manufacturers of tobacco are obliged to give bonds, in order to protect the internal revenue. Parties to legal proceedings sometimes have to give bonds; as, in cases of appeal, attachment, and injunction. These are a few prominent instances out of many. They show what an important position bonds occupy in the transaction of public and private affairs.

Mention has been made of a receiver. A receiver is an officer appointed by a court to take charge of some concern or business which has met with difficulties; and he gives a bond, because valuable property is placed in his charge. To take a familiar instance: when a railroad cannot be made to pay dividends, and is, in fact, bankrupt, nothing remains but to dispose of it. This is not always an easy matter; and, in the meanwhile, it would be inconvenient, if not ruinous, to stop the trains from running. So the road is put into the hands of a receiver, until some satisfactory arrangement can be made.

The person furnishing a bond is usually called upon to supply a surety or sureties. This is almost always the case, when a bond is required by law. It is customary for the surety to sign the bond along with the principal, whose surety he is. In doing this, he undertakes that he himself will

be responsible, if the principal fails to perform his duty. He walks, as it were, arm in arm with the principal.

In the instance already stated, with reference to the well, John Day's obligation would not have been substantially increased by his giving his own bond; and a bond, signed by himself only, might be worthless, but the name of a good surety would render it valuable. It is, in fact, the addition of the names of sureties that makes the giving of bonds effective and useful. We may be confident that John Day's surety, when he saw him neglecting the work he had promised to do for Adam Stuart, would not long remain idle. He would use every effort to persuade or compel him to perform his undertaking, in order that he, the surety, might be protected from loss. Under the conditions, Adam Stuart would probably get his well dug, *by means of the bond with surety*, though he might have failed to get it dug, if there had been a mere agreement, or even a bond without any surety.

When a statute requires the giving of a bond with sureties, it usually calls on the sureties to "justify" in a certain amount. This means that they must swear to being worth so much money, when all their debts are paid.

If the surety should unfortunately be obliged to pay for his principal's default, he is entitled to recover the amount in question from him, if he can. Any difficulty on this point arises, not from the absence of a legal right on the part of the surety, but from the lack of property on the part of the principal.

If the person who received payment from the surety has taken any additional security, the surety, on making pay-

ment, is entitled to the benefit of that security. It is not easy to express this more simply; but the point is an important one, which can be illustrated by an example.

* * * Let us go back once more to the case of the well, and suppose that John Day gave Adam Stuart a bond for $300, conditioned on the due performance of the work, and that Henry Wilkinson went on the bond as a surety, and had to pay Adam Stuart $100, by reason of some defect in the doing of the work. Henry Wilkinson would have a legal claim against John Day for the $100; and, if Adam Stuart had not only taken the bond with surety, but had also received some pledge from John Day on the same account, Henry Wilkinson, on paying the $100, would be entitled to hold that pledge, until he himself should be repaid. If the pledge were a valuable watch and chain, Adam Stuart, on being paid for the loss he had sustained, would be bound to hand over the watch and chain, not to their owner, John Day, but to Henry Wilkinson, who would go on holding them for his own security. If John Day had given a mortgage instead of a pledge, the same principle would be applied.

There are very many points in connection with the law of *suretyship*, which no one but a lawyer is expected to understand; but the points already mentioned are of such frequent application, that every intelligent man and woman of business ought to be acquainted with them.

There is a kind of bond frequently used in the criminal courts, called a *recognizance*. The "obligee" in a recognizance is the *commonwealth;* that is, practically, the commonwealth receives any money that is paid when the condition is broken. Recognizances are used to compel the appearance of witnesses in criminal cases, to compel a prisoner to appear in court when his case comes to be tried, to compel him to keep the peace, and so forth.

* * * Jerry Brinden, a man of very doubtful character, is charged with stealing a horse. He can be committed for trial at once, but the trial will not come on for a month. The witnesses in the case are not by any means citizens of the first class, and it is quite possible that they may be out of the way when the case is called. To make sure that these parties will be on hand when they are wanted, Brinden has to enter into a recognizance to appear for trial, and the witnesses have to enter into recognizances to be present at the proper time and place.

Generally speaking, the person giving the recognizance must provide a surety. Occasionally, however, a prisoner is allowed to go free on his own recognizance without any surety.

* * * A man is tried and found guilty of some offense which he is not likely to repeat. He was never arrested before, and the judge thinks he is already sufficiently punished by the disgrace and anxiety of the trial. He therefore requires him to "enter into his own recognizances" to appear in court for sentence whenever he shall be called upon to do so. That means that, if he behaves himself, or if he leaves the State, he will never be thus called upon.

If a person, accused of an offense, cannot give such recognrzance as is required of him to insure his appearance, he is imprisoned until the trial; and necessary witnesses in criminal cases are sometimes imprisoned also, in default of recognizances.

A recognizance is not a "commercial document;" but a business man may be asked to become a surety on a bond of this kind, and he ought to know what it is. No one should become a surety for another, under whatever circumstances, without reckoning the consequences. As the Book of Proverbs says: "He that is surety for a stranger shall smart for it; and he that hateth suretyship is sure."

CHAPTER III.

CONCERNING SALES OF MERCHANDISE.

The commonest kind of agreement is that which has to do with the buying and selling of merchandise. An agreement of this description need not be in writing, unless the agreed price of what is bought and sold amounts to $50. This, at least, is the limit in most States of the Union. It need not be in writing when the goods exceed that value, provided the buyer pays the price, or a part of it, or actually receives the goods, or a part of them.

* * * A retail clothier goes to a wholesale house, and orders 100 overcoats, at prices varying from $7 to $15. The invoice amounts to $1075. He does not sign any writing, though the salesman makes a note of the order. He does not make any payment, nor does he carry away with him a single overcoat. Singular as it may appear, he is not legally bound to take the overcoats when they are sent to him. If he had ordered them by means of a letter; if he had signed a memorandum, even in pencil, at the time of the sale; if he had wanted two dozen overcoats to be delivered at once, or even a single one, and had taken possession of it as a part of the whole quantity; if he had paid something, however little, on account, then the agreement would have been binding upon him.

It would indeed be disgraceful conduct on the part of the retail clothier to stand upon his legal rights, and cancel a bargain which had been fairly made, under such circumstances. If he were to do so, he would be likely to acquire the character of a dishonest tradesman, which would be to his disad-

vantage; but we are now considering the transaction merely in its legal bearings. This instance is one out of many, proving how desirable it is to embody an agreement in writing, when it involves any matter of importance.

If a dealer sells goods for cash, and the cash is not forthcoming, the buyer, of course, cannot demand possession of them. The seller has the right to hold them on the buyer's account, until payment is offered. The agreement is not dissolved by the failure of the purchaser to pay promptly. If the purchaser should delay payment for an unreasonable time, the seller would be entitled to sell the goods again for what they would bring, and charge the first purchaser with the difference in price, if any: always supposing the agreement itself to be a binding one, under the rules already explained.

If the seller of goods disposes of them on credit, and the buyer fails to pay, he cannot go to the buyer's store and reclaim the goods, or any part of them, on the ground that they are not paid for. He is simply a general creditor, and can bring his action at law, and get judgment, and have execution upon whatever goods of the debtor he can find, whether he himself supplied them or not. In some States, an "unsecured" creditor, like the man we are now speaking about, can have an "attachment" issued when he brings his action, and thus secure himself by means of any property belonging to his debtor on which he can then lay hold; but this is not the law generally. As a rule, an "attachment" will be issued only when the debtor absconds, or is hiding, or is otherwise trying to cheat his creditors, or when he resides out of the State, but has property in it. An attachment is a legal pro-

cess, by which the property of a debtor is placed in charge of an officer of the law, until the controversy between the debtor and his creditor is decided. The creditor, in ordering the attachment, is required to give a bond, to secure the debtor from loss, in case the claim should not be proved when the cause is tried. There are statutes in every State on the subject of attachments, and reference must be made to them for particulars.

It sometimes becomes important to ascertain at what precise time the ownership in goods changes hands; that is, exactly when they cease to belong to the seller, and become the property of the buyer. We have already seen that the unpaid seller, who sold for cash, might go on holding the goods; but, in such a case, they would belong to the buyer, and be at his risk in case of accident. The buyer would have a right to claim them, within a reasonable time at least, on offering the agreed price.

The rule on this point is thus stated: when the terms of sale are agreed on, and the bargain is struck, and everything the seller has to do with the goods is complete, they then become the property of the buyer, although there be no actual payment or delivery. Generally, if the seller has to finish the goods in any way, or to separate them from other goods of the same kind, or to weigh them, or to measure them, or make delivery of them, the title does not pass; and they do not specifically belong to the buyer, and are not at his risk, until this is done.

* * * A manufacturer of railroad cars received an order for ten cars, of a particular description. In order to complete them, it was necessary

to procure some fittings from a distant city. There was a long delay in getting these, though the builder did all in his power to expedite matters. All of his work was done, and he was only waiting for the fittings. Before they came, a fire broke out, and the cars were burned. The loss fell on him, not on the company which ordered the cars. The property had not yet changed hands.

This example admits of no doubt; but, in some cases, where the intention of the parties is clear, the property may pass from the seller to the buyer, before the goods are actually weighed, measured or separated.

* * * A farmer had 1000 bushels of grain in an elevator. He sold 500 bushels of it to a man in town, giving him an order for the same on the parties in charge. There was no necessity to separate the 500 bushels from the rest, all the grain being alike. The property passed to the man in town without any separation.

From the foregoing remarks, it is evident that the seller of goods may lessen his chance of loss by promptly getting them into that shape which the contract requires.

We now come to the topic of warranties. A warranty is an assurance given by the seller to the buyer at the time of the sale, and refers either to the title or to the quality of that which is sold.

The seller of goods, selling them at anything like a fair market price, is understood to warrant the title, although nothing whatever may be said on this point. This warranty simply means that he will protect the buyer, in case it should turn out that he had no right to sell the goods to him, and the buyer should have to give them up to their true owner.

The rule in question is very just. Otherwise, the buyer would lose his money, and get nothing. As for the seller, if he procured the merchandise in good faith, he can go to the person who sold it to him, and recover the price.

* * * A horse and buggy had been sold and resold, and were finally bought by a doctor. As he was driving out to see his patients, a man stopped him and said: "You are driving my horse, and that buggy belongs to me as well." "No, indeed," replied the doctor, "I bought the horse and buggy from Mr. Goldsmith, and he bought them from a man named Wright." "That may all be," said the other, "but I can prove that they were stolen from my stable about twelve months ago." This statement was correct, and the doctor had to give up the horse and buggy, and Mr. Goldsmith had to return him the price paid for them.

Questions concerning this "warranty of title" are not very frequent. There is another kind of warranty which is of greater practical consequence, and that is the warranty of quality.

In making any purchase, the buyer is supposed to have common sense and good judgment, and to make use of both; and he cannot withdraw from his bargain without the consent of the seller, merely because he is disappointed in the quality of the thing which he bought. In legal language, *there is no implied warranty of quality*, and the buyer must take care of himself as to that.

The courts have modified the rule just stated to this extent: when a thing is bought and sold for a special purpose, and that purpose is known to the seller at the time of sale, the thing must be reasonably fit for that purpose.

* * * There have been remarkable instances of this in well-known cases. A mercantile firm had occasion to use ropes in lifting heavy casks into its warehouse. A quantity of rope was bought, without anything being said about the necessary strength; but the ropemaker knew what it was wanted for. The rope broke under the strain, and the ropemaker was held responsible for the damage. In another case, copper was bought to sheathe a vessel. It turned out to be a very poor quality, and the salt water corroded it. The court decided that the seller was bound to supply copper reasonably suitable for the purpose, which this was not. On the same principle, if I go to a store and buy a lamp, I may justly complain if it gives no light; but I have no proper cause of complaint, if I find that the ornaments of the lamp, which I thought very neat when I bought it, are really no better than so much gilt ginger-bread; neither can I properly complain, although I am generally disappointed with my bargain, if only the lamp will give a fair light. It was sold for the purpose of lighting; and, while it need not be excellent in its quality, it must be reasonably fit for that purpose.

If the buyer wishes to protect himself beyond this point, he must secure an express warranty. That is to say, he must require the seller to say expressly that the thing in question is of such and such materials, or of a certain and recognized quality or grade, or that it will do work of some special kind with a certain degree of excellence. To create an express warranty of quality, there must be some statement of a definite character. This statement need not be in writing. It is binding if made by word of mouth; but, in any purchase of large value, it is obviously advisable to have it in writing. Whether spoken or written, it must relate to some well-defined fact.

* * * A young man was buying a coat in a clothing store. The storekeeper assured him that it was a splendid piece of goods, very fashionably made, and that he would look well in it. The customer asked

what material the coat was made of. The merchant replied, "It is all wool." The young man bought and paid for the coat, and took it home. He found that it was very far from being "a splendid piece of goods," that he did not look well in it—at least so his friends said—and that it was made of a mixed material, part wool and part cotton. The statements about its being splendid, and fashionable, and about his looking well in it, were too vague and general to amount to anything; but the statement about its being "all wool" was specific and precise, and amounted to a warranty. The young man had a right to return the coat and demand the repayment of his money. Where a farmer bought a reaper, the statement that it would cut ten acres a day, if rightly used, was a warranty.

The seller, in his anxiety to make a sale, will occasionally assure the buyer that the thing sold will give him entire satisfaction. This is a dangerous statement to make; although, taking one sale with another, the seller may perhaps find it profitable to make it. The law of the matter, as generally laid down, is this: if the seller promises the buyer entire satisfaction, he is bound to satisfy him; and it makes no difference whether the buyer's requirements are reasonable or unreasonable.

* * * A certain widow went to a sculptor to order a marble bust of her deceased husband. She expressed a fear that the bust might not be a good likeness. Eager to effect a sale, the sculptor assured her that he would do his work so as to satisfy her completely. With this understanding, she directed him to proceed. As the sequel shows, the remark which the sculptor made, in his anxiety to secure the order, was not a very prudent one. The bust was finished, and stood in the sculptor's studio. Almost every one who saw it thought it excellent; but the widow said he had not caught the exact expression, and she was not satisfied. She refused to receive or pay for the bust. The court sustained her, saying that if the sculptor chose to make a bargain like that, he must perform it. If he had promised her *reasonable* satisfaction, he could have shown that she ought to have been satisfied, whether she really was or not.

There have been a great many cases of this kind in the courts, involving all sorts of things, from a set of teeth to an elevator. The seller who has promised perfect satisfaction has usually had the worst of the controversy, and has often paid dearly for his experience.

Goods are frequently sold by sample. A sale of this description carries with it such a warranty as the reader might expect, namely, that the bulk is equal to the sample. When the buyer has had a fair opportunity of examining the sample, he cannot complain of any defect in the goods, when the same defect existed in the sample, though he did not notice it. If, however, he had not a fair opportunity for examination of the sample, the case is different.

* * * In a case which went to the Supreme Court of the United States, the subject of the sale was a species of dye, called madder. The sample was in a bottle, and was "very handsome to look at;" but the buyer was not allowed to open the bottle. If he had opened it and examined it, he could not then have complained of any defect existing alike in the sample and in the bulk. As it was, he was allowed to recover, because he had not been fairly dealt with, and the goods delivered to him were not up to the proper standard.

CHAPTER IV.

SALES OF MERCRANDISE, CONTINUED.

If the purchaser finds that the goods he has bought do not correspond to the warranty, three courses are open to him, according to the circumstances: (1) he can refuse to take the goods, because they are not what he agreed to purchase; (2) he may take them as they are, and claim damages on account of breach of warranty; (3) he may take them, and claim a proper reduction in the price, when the account becomes due.

* * * A retail merchant sends an order to a wholesale house for 100 pairs of ladies' shoes, "real French kid," at list prices, subject to the usual discount. When he gets the shoes, he finds that they are not what are known in the trade as "real French kid," although invoiced as such. They belong to a lower grade, called "imitation French kid." As has already been said, he has the right to notify the seller that he will not take them. Let us suppose, however, that the boxes were put aside, and the mistake not discovered until after the account was paid. In that case, he can claim for the difference in value; and, if an amicable settlement is impossible, he can bring an action to recover the difference as "damages." If he finds, before he has paid for them, that the shoes are not what he ordered, he can refuse to pay, except with a proper allowance; and, if the seller will not make a proper allowance, he can plead the breach of warranty when the seller sues him for the price. In other words, he can wait until he is sued, and the court will instruct the jury to make such an allowance.

The amount which ought to be allowed depends entirely on circumstances. In the case already given, it would be the difference in current price of the two qualities of shoes. The breach of warranty may involve much larger consequences than in the illustration just given. If so, the allowance must be measured by these consequences.

* * * A market gardener ordered from a seed store a large quantity of "Wakefield" cabbage seed, at an agreed price. The quantity of seed ordered was delivered, paid for, and sown. When it came up, the gardener found the cabbages were not "Wakefield," but cabbages of an inferior kind. Inasmuch as the order called for "Wakefield" cabbage seed, and the goods were billed as such, the seller had unmistakably warranted them to be of that variety. In a suit for damages brought by the gardener, the seedsman was made to pay, not merely the difference in value between the two kinds of seed, but the loss which the gardener sustained by not getting that particular kind of cabbage which the seed ordered would have produced.

Damages for breach of contract ought to amount to as much as will reasonably compensate the injured person for the injury done to him. They ought not, usually, to do more than this. In case of the shoes, the difference in value would be a reasonable compensation; while, in case of the cabbage seed, it would not. This is the rule applied in a vast majority of cases. Sometimes, there has been such conduct on the one side or the other as justly increases or lessens the "measure of damages;" but it is sufficient now to note the general rule.

Persons will occasionally agree beforehand as to the sum which shall be paid in case of a breach of contract. Such an agreement is sometimes very useful, and again it may become a source of trouble. On the one hand, it may be a matter of

great difficulty to appraise or calculate the amount of damages, when damage occurs. In such cases, it is convenient to make a special provision on that subject. On the other hand, a general stipulation for the payment of so many dollars for *any* breach of contract is usually disapproved, because it makes no distinction between a serious breach and one of small consequence. In the latter case, the agreement will not be strictly enforced. The party in fault will simply have to compensate the other in a reasonable amount.

* * * (1). A druggist took a young man in as a clerk, promising to teach him the business. Being a prudent person, he considered that if this young man should learn all he had to teach him, and then open a drugstore near him, the result might be detrimental to his own trade. He therefore required the young man to sign an agreement, promising to pay $2500 if he opened a drugstore within a certain distance of the place. The young man, on starting a business of his own, did open a drugstore within the prescribed distance, and supposed he would have to pay only a moderate compensation for the injury he had done; but it would not have been easy to estimate that injury exactly; and, as the parties had already agreed upon the amount, he had to pay the $2500. The sum thus agreed on is called in law "liquidated damages."

* * * (2). A land owner wanted a house built. He was a very exacting man, and wished to have it built precisely in a certain way, and by a certain time. To make sure of all this, he made the builder agree to pay him $1000 if he failed in any particular. The builder was three weeks late in finishing the house. Inasmuch as the damage thus caused might be a subject of calculation, and could not well amount to $1000, the builder had to pay only such a sum of money as would be a fair compensation for the delay.

* * * (3). A manufacturer of gold pens required his employees to give a bond to pay a fixed sum of money if they revealed the secrets of the

manufacture. The loss incident on the breach of their duty in this respect would not be easy to ascertain. Therefore, an employee who did reveal the secrets of the manufacture was made to pay the full amount named in the bond.

* * * (4). An actor bargained with a manager of a theatre to take the part of principal comedian, for four consecutive seasons, at a fixed salary per night. It was agreed, in writing, that if either party failed to fulfill his agreement, or any part of it, or any stipulation contained in it, he should pay the other the sum of $5000. The actor refused to act during the second season. No distinction being made in the agreement between serious and trifling defaults, the court held that the damage could be estimated by a jury, and declined to enforce the whole penalty.

These examples lie outside of sales, it is true; but they furnish a convenient illustration of an important principle. It is not always easy even for a lawyer to tell whether the amount agreed on will have to be paid in full. The principal point to remember is this: a stipulation for an agreed sum, as damages for breach of any kind of contract, will not always be literally enforced, and advice should be had in framing such a stipulation.

There is a case which does not often occur; but, when it does, a knowledge of the law may save hundreds or thousands of dollars. We have seen that a seller, who is unpaid, having sold on credit, cannot go to the buyer's store, even if the latter is bankrupt, and take back the goods he sold, on the ground that they are not paid for; but, if the goods are yet in transit, and the buyer fails before he gets them, they can be reclaimed. This is what the law calls stoppage *in transitu*, or stoppage on the way. The seller, in such a case, should lose no time in notifying the *carrier* not to deliver the goods. His notice to the *buyer* will be of no value whatever.

* * * A retail dealer in St. Louis orders an invoice of hardware in Pittsburg, to be sent as freight. While it is on the road, the retailer becomes insolvent. He cannot pay his obligations in the ordinary course of his business. A friend in St. Louis knows of this circumstance, and happens to hear of these goods as being on the road. He, of his own accord, telegraphs the seller in Pittsburg, and receives a reply instructing him to stop the goods. He then writes a note to the railroad company, in the name or on account of the seller, ordering the company not to deliver the goods, and hands that note to the freight agent at St. Louis. The railroad company is now bound to refrain from delivering the goods. The seller in Pittsburg can well congratulate himself on having received that dispatch; because, if the goods had not been stopped in time, he would have had to take his chance, along with the other creditors of the man in St. Louis, and might have lost the whole value of his invoice.

It frequently happens that a person living in one place will order goods from another place, and that they will be delivered by means of a common carrier; the last example affords an instance of this. *A common carrier* is a person or a company that undertakes to carry goods (or passengers, or both) for the public generally, between certain points. The responsibility of a common carrier is peculiar. When once he receives goods for the purpose of carrying them, he is bound to deliver them safely. If they are stolen from him, or accidentally burned, or lost, he has to pay their value. This rule, however, admits of some exceptions. If the loss arises from what the law calls "the act of God," or from the act of "the public enemy," the carrier will be excused. By "the public enemy," is meant an enemy with whom the state or nation is openly at war. As we live in times of peace, this exception is seldom heard of. If a mob of rioters were to attack a train, and plunder the freight cars, they would not be "the public enemy," and the railroad company

would have to account for the loss. By "the act of God" is meant some sudden and violent operation of nature, which could not be foreseen, and against which ordinary prudence could not guard. Thus, an earthquake, or a great tempest, or a stroke of lightning, would be "the act of God," and the carrier would not be responsible for any damage thus caused. If the goods perished by reason of bad packing, the carrier, of course, could not be charged; nor if some inherent defect in the goods themselves were the cause of loss; as, for example, where a cargo of oranges became spoiled without the carrier's fault. In the absence of special circumstances like these, the carrier is bound to deliver goods safely. The reason of the rule is this: the goods are almost always beyond the owner's reach, while they are thus carried. He is not in a position to prove exactly what became of them, or how they were injured. He would, therefore, be at a serious disadvantage, were the rule of law different.

So far as the seller is concerned, when once he has placed the goods in the carrier's hands for the purpose of carriage, they are no longer in any degree at his risk; that is, supposing him to have supplied such goods of the kind required as would ordinarily bear the journey, and to have packed them with care. Any remaining risk rests upon the buyer and the carrier; mainly on the carrier. Thus, if the goods are destroyed by fire, the carrier, as we have seen, will have to pay for them; but, if the fire were the result of a stroke of lightning, the consignee (as the purchaser is sometimes called) would be the loser; because, as we have just seen, lightning occurs by "the act of God."

The question of responsibility during the journey is not, however, very frequently raised, since, in all but a few instances, the carrier is absolutely bound to deliver safely. When the journey is over, the matter becomes important. As soon as the act of carriage is complete, the carrier becomes a "warehouseman," and is responsible for only ordinary care of the goods held by him. If, therefore, the carriage being over, a fire should break out in the neighborhood of the carrier's warehouse, without any fault of his, and should destroy the warehouse with its contents, the carrier would not be liable to the consignees whose goods might be thus destroyed. The consignees would be the losers, subject to any insurance they might have effected. Those who are in the habit of receiving parcels of goods from time to time, by means of common carriers, frequently hold an insurance on goods in transit, to cover this very risk. A steamboat may be a common carrier, just as much as a railroad, and the wharf will be a warehouse in the sense of the rule now stated.

Generally speaking, the common carrier of merchandise does not undertake to deliver it at the consignee's address, but merely to notify him of its arrival. If the carrier undertakes to make a complete delivery, his risk continues until that complete delivery is made; that is, until he places the goods on the premises of the consignee. If the consignee is to send to the warehouse for them, or employs the carrier, for additional pay, to deliver them from the warehouse, the original risk ends when the original transit is over.

Such is the general rule. It may be modified by local customs, and by matters of special contract, which it would be

useless now to consider. Some common carriers, such as express companies, habitually deliver what they carry at the address of the person who is to receive it. Railroad and steamboat companies, which are the greatest of all carriers, usually do not. The question, at what exact point of time the common carrier becomes a warehouseman, may, in some cases, be difficult to determine. It always resolves itself into the further question of whether the work of carrying is fully over.

Common carriers, knowing how heavy their responsibility is, in regard to the safe carriage of what is entrusted to them, frequently seek to limit that responsibility by special conditions, which are printed in small type on their receipts or tickets; and this they do as to freight, baggage and passengers. Generally speaking, the person who needs the services of a common carrier has no option except to employ him; and this circumstance tends to place the public at the mercy of the railroad companies. These companies enjoy large privileges, and undertake a great public duty. They are not, therefore, permitted to make what bargains they choose, like private individuals. All conditions which they impose on their customers must be reasonable and just. The question as to what conditions are reasonable, and what unreasonable, must be decided by courts of law. There are many decisions on various points which have thus been litigated. The general result of them may be stated as follows:

(1) Conditions which are intended to protect the company from the consequences of its own negligence, or the negligence of those whom it employs, are unreasonable and void.

(2) Nevertheless, the company may relieve itself of a large share of its responsibility by making a special contract with its customer, at reduced rates.

(3) As to passengers' baggage, it may lawfully decline to carry more than a certain weight, or to be responsible for more than a fixed value, unless specially paid for the same; but the amount, in weight and in value, must answer the reasonable requirements of ordinary passengers.

The law of sales, which we have just been considering, is very extensive; and those who have discussed it fully have written volumes upon it. One of the leading works on the subject is that of the late Mr. Judah P. Benjamin, who went to England, and practiced law there, after the collapse of the Confederacy. Some of the main points concerning sales have been outlined here. A business man ought to know under what circumstances a writing is necessary, what a warranty is worth, when goods can be stopped *in transitu*, how far a common carrier of merchandise is usually responsible, and wherein a common carrier differs from a warehouseman. Knowing these things, he can act intelligently in most cases of ordinary occurrence, and in some cases which are not ordinary. When the circumstances, besides being unusual, involve much loss or gain, he ought to get the best advice to be had, and to get it promptly.

CHAPTER V.

CONCERNING INSURANCE.

Almost every person engaged in business has more or less to do with insurance. The prudent merchant insures his stock in trade against accidental fire; the owner of a cargo insures it against perils of the seas; the father of a family insures his life for their benefit; the traveler occasionally insures himself against accident. Insurance is an agreement whereby one party, called the *insurer*, undertakes to protect another party, called the *insured*, against some apprehended loss. The "*insurer*" is almost always an insurance company.

Four kinds of insurance have been mentioned. Of these, marine insurance is the most ancient, having been used for six hundred years, at least. Fire insurance came into prominence after the Great Fire of London in 1666, and life insurance about forty years later. Accident insurance is quite modern.

There are two kinds of insurance companies, known as joint stock companies and mutual companies. In a joint stock company, the shareholders take shares of the stock at a certain price, usually paying a part at once, and the rest when duly called on. The money paid in is invested according to the discretion of the directors, and furnishes security to those who do business with the company. The legal obligation of the

shareholders, to pay up what is still due on their shares, furnishes additional security. The security of the concern usually consists in land, buildings, miscellaneous investments, debts due from the shareholders on their shares (otherwise called "unpaid capital,") and any reserve fund that may have been accumulated.

With a mutual company, the case is different. There, the persons who obtain insurance rely upon each other. They make a subscription to start the company in motion, and generally give notes in proportion to the amount of their own insurance, binding themselves thereby to pay at a certain rate when losses occur. The profits are divided in due proportion. The plan of mutual insurance seems economical, and answers well when the members of the company are trustworthy, and the management is careful and honest. Mutual insurance companies frequently do a general business, beyond that which their name implies.

The document expressing the contract of insurance, and defining its terms, is called a *policy*. The money paid for the insurance is called the *premium*. Although the law does not require the contract to be in writing, the companies always make out a policy. When the company's agent agrees to take the risk, it is understood, in case of fire insurance, to operate immediately; and the risk attaches, although the policy is not yet made out. In other words, a person who has bargained for the insurance of his property against fire, will be protected if it burns down after the bargain is made, but before the policy is filled out and signed. There is no reason why the

insurance should not commence at a future date, if that be the intention of the parties; but the intention generally is, that it shall commence at once.

We will now inquire what a man may insure. As regards property, he is allowed to insure all that he owns, and any interest he may have in property that he does not own; but the law does not allow him to engage in a gambling speculation, under cover of insurance.

* * * A building contractor owns a house on Market street. He has just built a stable on Fourth street, for a man who has not yet paid him. His work on the stable is worth $800, and he has filed a mechanics' lien, to protect himself. If his own house were to burn down, of course he would be a loser. If the stable were to burn down, he would also be a loser, because the security of his claim for the $800 would be diminished. He can insure his own house, and the $800 interest in the other man's stable; but, if he were to insure the church around the corner, which he does not own, and in the preservation of which he has no pecuniary interest, the law would not assist him to recover money on the church, were it to burn down, any more than it would assist him to recover money due on an unlawful wager.

When property is insured, and afterwards sold, the consent of the insurer must be obtained. Unless it is obtained, his liability ceases. The company does not insure property against destruction. It rather insures the owner against loss; and, if the insured no longer owns the property, he sustains no loss when it perishes. The execution of a mortgage makes no difference in this regard, because the mortgagor is still the owner. The usual mode of signifying consent is by endorsement on the policy; and policies of fire insurance commonly have a blank form ready printed on the policy for this pur-

pose. No honest company will refuse its consent to a transfer of the insurance, without some good reason.

We have already seen that a common carrier is responsible for the destruction, by fire, of the goods which he is carrying. This being the case, he has an "insurable interest" in those goods, although they do not belong to him. Common carriers usually keep an "open insurance" on goods in their charge, to protect themselves against this cause of loss. Whenever a person has charge of the goods of another, in such a manner as to be responsible for their destruction, he is at liberty to insure them.

When a mortgage is placed upon a building, the mortgagee, to whom the money is due, has an insurable interest to the amount of the debt. The debtor, who is otherwise called the mortgagor, may insure the property up to its full value, or as near that as the company will allow. As to this matter, the existence of a mortgage makes no difference to him. Both he and his secured creditor, therefore, have an "insurable interest" in the premises; but the creditor is not allowed to insure for more than his own interest, which is measured by the amount of the debt. Otherwise, he would be speculating on a hazard which was no concern of his. In practice, however, the creditor usually requires the debtor to keep the premises insured for his benefit, and does not take out a policy himself. An insurance exceeding the interest of the person insured is called an "over-insurance."

Where a retail merchant holds a stock of goods, he is at liberty to value them, for the purpose of insurance, at their retail price. This will not be an over-valuation, though the

value as stated in the wholesale invoice is considerably less; but a company seldom or never insures up to the full amount of the valuation.

The principle is much the same in life insurance. You may insure your own life for the benefit of any one you choose to name, whether a relative or not. A husband may insure the life of his wife, and a wife the life of her husband. As to other domestic relationships, it may be said that whenever there is a condition of dependence and support, the person depending on the other, and receiving support, has an insurable interest in the other's life. Thus, a child who is maintained by his parent can insure his parent's life; and a parent who is maintained by a child, or a sister who is maintained by a brother, can do likewise. There is a tendency to widen the rule somewhat, in these latter cases. Practically, however, the matter stands thus: where a person is supported by a near relative, or has some pecuniary interest in the continuance of that relative's life, so that the death of the latter would be likely to make him poorer, the person thus situated has an insurable interest in the life of the other. If there be merely the relationship without the pecuniary interest, the law should be examined as to the particular case. A creditor may insure his debtor's life, up to the amount of the debt. The essential thing (it has been said) is that the policy should be obtained in good faith, and not for the purpose of speculating upon the hazard of a life in which the person insured has no interest. The object of the transaction must be something beyond a mere wager.

There is no limit, except in the case of creditor and debtor, to the amount for which a life may be lawfully insured. The

earning capacity of the person, or the commercial value of his life, does not enter into the question. If a man in ordinary circumstances chooses to devote all his savings to the payment of premiums, so as to enrich his family when he dies, he is at liberty to do so. There are a number of men in the United States whose lives are insured up to the amount of $500,000.

The topic of warranties and representations plays a great part in insurance law. The person desiring insurance is frequently required to make out an application, in which he has to answer a number of questions. This is invariably the case, when the insurance is on a life. It sometimes happens that the answers given are not strictly correct. Again, the policy usually contains a list of conditions and exceptions, drawn up by the insurer; and some of these conditions and exceptions, if followed out literally, are hard and unreasonable. In these matters, the law stands very much on the side of the person insured. It is presumed that the insurer intended from the beginning to make an honest contract, and not to take advantage of every trifling slip or accident; but, if a warranty or representation, made by the insured, involve some matter seriously affecting the risk, and be not duly fulfilled, the insurer may properly decline to pay for the loss, when it happens. If the insured, in filling out his answers, is not certain as to any of them, he ought to qualify what he writes down by some such words as "I think;" or, "to the best of my belief."

* * * A debtor owed his creditor $5000, and had no speedy prospect of paying it. The creditor thought to himself, if my debtor were to die, I should lose all that money; so I will insure his life for $5000. The application contained the question, "Of what disease did the debtor's father die?" The creditor thought he had died of an accident, when in fact he

had died of consumption; and he filled in the wrong answer. The company, relying on the supposition that there was no consumption in the family, issued the policy. When the debtor died, the truth on this point came out on inquiry. The company had been led into the contract by a misrepresentation, and was not bound to pay the loss. Had the creditor written, "He died accidentally, "*as I have been told;*" or, "*as I believe*," the case would have been different.

In answers like these, the law will lean in favor of the insured, if such a thing be reasonably possible. For example, a statement that the person, concerning whom the inquiry is made, is of "temperate habits," is not understood to mean that he never gets drunk; because *a habit* is not to be inferred from an act which may be only exceptional. A statement that the person is now "in good health," does not mean that his health is perfect, but only that it is reasonably good, so that he is a fair subject for insurance at the customary rates, according to his age.

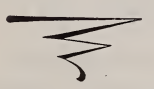
A similar principle is applied to the examination of conditions introduced by the insurance company for its own benefit. For example, where a dwelling house was insured, and it was stipulated that the occupant might not "keep or have" on the premises any camphine, benzine or phosphorus, under pain of forfeiting the policy, it was held that this did not refer to the use of small quantities for domestic purposes. Where the stipulation was that the policy should become void if the premises became "vacant or unoccupied" for a certain period, it was held that this had no reference to such absence as arose out of an invitation to attend a funeral. These are only a few instances out of many, showing that the companies will not be allowed to take an advantage

of the insured, by insisting strictly and severely on the words of the agreement. This principle really operates as much in favor of the insurer as of the insured; because, if the insurer were permitted to dispute a claim on account of every trifling irregularity, he would be strongly tempted to do this frequently, and people would become afraid of effecting insurances at all.

The reader must not infer from the foregoing remarks that representations made by the insured, and conditions imposed by the company, are matters of very little consequence, which may be disregarded. Such is not the case; but these representations and conditions will be so interpreted in case of dispute as to work out substantial justice, so that neither party shall be oppressed or victimized by the other.

It occasionally happens that the insurance agent will say to the person seeking insurance, that a certain condition, though embodied in the printed form, will not be insisted on. It is generally unsafe to rely on this statement, especially when the condition is one which materially affects the character of the risk. If the company itself habitually disregards the performance of the condition, so as to lead persons dealing with it to suppose that the condition is "a dead letter," it will not be allowed to insist on it. Perhaps the most important point under this head is that of promptness in payment of premiums. When the insurance company, through its agent, is accustomed to receive such payments after their due date, this is as much as to say that prompt payment, however desirable, is not absolutely necessary; and then, in case of loss, it will be no sufficient answer to say that the last installment of premium is

over-due and unpaid. It is to be noted, however, that prompt payment is of greater importance in life insurance than in fire insurance. This arises, in part, from the fact that, in fire insurance, the risk is much the same from year to year, while, in life insurance, it grows continually more hazardous; but we need not now inquire into all the reasons. It is sufficient for practical purposes to know that prompt payment of insurance premiums is always desirable, and particularly so in the case of a life insurance.



CHAPTER VI.

CONCERNING BILLS AND NOTES.

In every civilized community, the volume of trade greatly exceeds the volume of currency. Let us try to examine what this means.

If all transactions of paying money or lending money had to be conducted in *cash*, there would not be nearly enough cash in the country to meet the demand for it. If we were to add to the cash all the greenbacks which the government of the United States could safely issue, still there would not be enough money to do business with.

We have said, all the greenbacks which the government could *safely* issue. No government on earth can create money. Greenbacks circulate like coined money because the people have confidence in them; and the people have confidence in them because they know that any one who presents a greenback at the United States Treasury in Washington can get gold or silver in exchange for it, at its face value.

This was not always so. During the Civil War, the United States Treasury did not redeem its greenbacks, because there were many more greenbacks in circulation than the Treasury had coin to buy them back with. The consequence was this: the greenbacks declined in value, until a hundred dollars in

greenbacks, in the month of July, 1864, were worth only about thirty-five dollars in gold. Then, far-seeing speculators, who felt sure that all would come out right, bought up greenbacks, and locked them away in their safes, and finally made a good profit on them.

If the United States government were to go on printing greenbacks in excessive quantities, as some very foolish people have wished, the result would simply be another depreciation in the value of the greenbacks; and this would help to make a few men rich, and a multitude of men poor. The greenback is the promissory note of the United States, and it is worth so much, because the government is able and willing to keep its promise.

While we see a great many greenbacks, and a great many American coins, no one ever sees a dollar which has been issued by any particular State, or a piece of paper which can be called the currency of any particular State. There is a good reason for this: the constitution of the United States provides that no State shall coin money, or "emit Bills of Credit." (Article I, Section 10). Were it not for this, we should probably have a curious variety of coinage and currency on this continent.

Let us now come more closely to the subject of this chapter. Inasmuch as all our coinage, and all our currency, is insufficient for commercial requirements, the law gives a peculiar credit to what is called "negotiable paper," which supplies so great a want. This term, "negotiable paper," includes bills of exchange, promissory notes, bank notes, bank checks and several other instruments. The value of these

documents, of course, depends on the commercial solvency of the persons or companies of persons who sign or endorse them. As business people are generally solvent, and care is generally used in taking negotiable paper by way of payment, this kind of paper, though not equal to currency, is found safe enough for ordinary transactions.

By negotiability is meant, in the first place, a capacity of transfer from hand to hand, in such a manner that any person coming regularly into possession of the paper is immediately brought into legal relation with those whose names are already on the paper, and can bring an action in his own name, if payment is not made when the paper becomes due. There is also, connected with negotiability, a further quality of great importance. Any one who takes negotiable paper, in the regular course of business, while it is not yet due, and has no notice of any existing occurrence which affects that paper, and tends to lessen or destroy its apparent value, will be protected against the consequences of that occurrence. In other words, a person thus taking the paper, who is called "an innocent holder," or a "*bona fide* holder," is entitled to rely upon it as meaning what it says, without any allowance or qualification. The only risk he assumes is that of the solvency of those parties whose names are on the paper, and on the faith of whose promise he takes it.

This is a point of the utmost consequence, because on it depends the credit and utility of the whole system of commercial paper. An illustration will help to explain what "negotiability" means.

* * * Andrews makes a promissory note, for the sum of $800, payable in six months to Bowman. Bowman endorses it to Chadwick, and Chadwick endorses it to Davenport, who holds it. In the first place, when it falls due, and Davenport presents it to Andrews, if Andrews does not pay the $800, Davenport can sue him upon the note; that is, he has a legal cause of action upon the note against Andrews, although he never had any direct dealing with him, and perhaps never saw him before. In the second place, if it so happened that Andrews had paid Bowman $300 on account of this note, or had made a payment to Chadwick while *he* held it, Davenport could still sue Andrews for the whole $800; because he knew nothing about the part payment. When Andrews made this part payment, he should have had the same endorsed on the back of the note, and then Davenport, when he got the note, would have seen that part had been paid, and would have taken the paper "with notice."

There are some kinds of paper which pass from hand to hand, very much like the promissory note of which we have spoken, but which are destitute of the protection which made that note so valuable. To this latter class belong bills of lading and warehouse receipts, which are said to be "quasi-negotiable." In other words, the person who pays value for a bill of lading or a warehouse receipt, which is regular on its face, cannot safely rely on that apparent regularity as he could on the regularity of a promissory note. If the promissory note already mentioned had been overdue when Davenport took it, then Andrews could have used the $300 as an off-set to the $800; and he would only have been obliged to pay $500 to Davenport. Commercial paper, which is overdue, carries on its face a notice that something is a little out of order; because the date suggests the question: "Why has not payment been made on this?"

Let us inquire into the nature of bills of exchange, promis-

sory notes, bank notes, bank checks and negotiable instruments generally.

A promissory note is a simpler thing than a bill of exchange; but a bill of exchange has a longer history. Several hundred years ago, the merchants of Genoa and Florence and Venice had extensive dealings in other great European cities. These dealings consisted, in part, of exchange of goods at current prices; as, where a man in Genoa would send a quantity of velvet to London, and get back the value of it in cutlery. It was not always convenient to do business by this process of barter; and it was frequently necessary to send large sums of money in the shape of coin, from one place to another. In those days, people would sometimes travel in companies, and hire an armed convoy to protect them against robbers. It would occasionally happen that some one in London (let us say) wanted to go to Genoa, and had to supply himself with money for the journey there and back, and for such purchases as he intended to make in foreign parts. At the very same time, there might happen to be a London merchant who had sent goods to Genoa, and was not yet paid for them. Putting these two things together, it is evident that money would have to go from London to Genoa, and money would have to come back from Genoa to London. This would involve a good deal of unnecessary and dangerous transportation of gold and silver; unnecessary, at least, if any means could be found of transacting affairs in a more convenient manner. So the following plan was devised: the man who was going from London to Genoa handed over so much coin to the London merchant, who was the creditor of the Genoa merchant, and took with him a letter from the London merchant to the Genoa

merchant, requesting the latter to pay him a sum of money equivalent to the coin which he had deposited in London. By this means, all parties were accommodated; the London merchant received payment, which he wanted; the Genoa merchant was relieved of the trouble and risk of sending coin to London; and the traveler was relieved of the trouble and risk of taking coin from London to Genoa, since all he had to take was a piece of paper,—a letter, in fact, which could not be very well used by any one except himself.

In mastering the details of this simple transaction, the reader will get a fair notion of the origin of commercial paper, and will be prepared for the following definitions:

A bill of exchange (which is frequently called a draft) is a written order or request by one person to another for the payment of money at a specified time, absolutely, and at all events. This is the language of Mr. Justice Bailey, and is approved by Chancellor Kent.

There are usually *three parties* to a bill of exchange, from the outset. The one who writes it is called *the drawer;* the one to whom it is written is called *the drawee;* and the one who is to get the money, or, in other words, in whose favor it is drawn, is called *the payee*.

In the example already given, the London merchant was the *drawer*, the Genoa merchant was the *drawee*, and the traveler was the *payee*.

A promissory note begins its career with *two parties* only. It is defined as a written engagement by one person to pay another, therein named, absolutely and unconditionally, a

certain sum of money, at a time specified therein. This is the language of Mr. Justice Story. Chancellor Kent calls it a written promise for the payment of money at all events.

Let us now examine a bill of exchange and a promissory note, and see what differences there are between them.

Here is a bill of exchange:

$250.00. BALTIMORE, Md., January 16, 1893.

At sixty days' sight, pay to the order of Nathan S. Bradley, two hundred and fifty dollars, and charge the same to the account of

To Austin, Barlow & Co.,
San Francisco, Cal.

JOHN M. WATKINS.

And here is a promissory note:

$300.00 CHICAGO, Ill., Jan. 16, 1893.

Three months after date, without grace, I promise to pay to Samuel Finley, or order, the sum of three hundred dollars, with interest at the rate of eight per cent. per annum from date until paid.

JOSEPH GREENLEAF.

It is clear at a glance that the bill of exchange is a *request*, while the other document is a promise; and that the bill of exchange has one more party to it than the promissory note. The bill, however, might have read "Pay to myself, or order," instead of "Pay to Nathan S. Bradley, or order." In that case, the *drawer* and the *payee* would have been the same person, and there would have been only two parties to the bill, namely, Mr. Watkins, and the firm in San Francisco.

The words "value received" have been introduced into the foregoing forms. They mean that the paper has a basis in some actual obligation to pay money: that is, that it was not executed gratuitously; but, as the law presumes this to

have been the case, the words "value received," or "for value received," are not necessary, though they are generally introduced into commercial paper.

The bill of exchange here drawn up says, "Nathan S. Bradley, *or order;*" and the promissory note says, "Samuel Finley, *or order.*" This means that payment is to be made to the person named, *or to any other person whom he may indicate.* The mode of indicating that other person is by endorsement.

The words "or order" make the paper negotiable. It can pass from hand to hand by endorsement and delivery. If the words had been "or bearer," then the paper would be negotiable by mere transfer, without endorsement, like a greenback, which is payable to bearer, and never endorsed.

By endorsement, is meant signing one's name across the back of the paper. When the name only is signed, the endorsement is said to be *in blank.* When the endorser specially indicates the person to whom he transfers the paper, the endorsement is said to be *special,* or *in full.* In the case of the promissory note here given as an example, if the payee were merely to write his name across the back of the note, thus,—*Samuel Finley*, that would be a blank endorsement. If he wanted to turn the note over to Benjamin Woodhouse, and wrote across the back, "*Pay to the order of Benjamin Woodhouse,*" and under that "*Samuel Finley,*" the endorsement would be special.

The act of endorsement does not transfer the paper. To produce that result, there must be a delivery of it to the person who is to take it, or to some one else on his account. The

mere act of delivery may sometimes be a sufficient transfer, without any endorsement. This is when the paper is payable to bearer, or when the last endorsement is in blank. If Mr. Greenleaf's note to Mr. Finley had been merely endorsed "*Samuel Finley*," and so handed to Mr. Woodhouse, Mr. Woodhouse could then lawfully transfer it without any further endorsement, to any person who might be willing to take it in that shape. Usually, however, in such a case, the person taking the note or bill requires the party from whom he takes it to add his own endorsement. The refusal of the latter to do this might render the man about to take the paper suspicious, and hinder the transfer of it.

Commercial documents ought not to be *dated, signed* or *transferred* on a Sunday; but, if a bill or note be dated on a week-day and delivered on a Sunday, or dated on a Sunday and delivered on a week-day, it will be good in the hands of an innocent holder. Public sentiment varies considerably on the Sunday question, and local statutes and judicial opinions vary with it. In New England, especially, the Sabbatarian principle has been enforced with rigor; but the tendency in the United States is toward liberality, though bargains of a strictly mercantile character, made on Sunday, are generally voidable.

CHAPTER VII.

BILLS AND NOTES, CONTINUED.

Negotiability, as we have seen, is a highly valuable quality of commercial paper. In order that such paper may circulate with freedom among business men, and supply the want for which it was created, the man who takes it in the regular course of business is largely protected. A note or a bill is presented to him in place of money. Acting in good faith, he examines it. He sees the names on it to be those of citizens in whom he has confidence. He perceives its general form to be regular. He notices that it is not yet due. The law does not require him to look any further. If it did—if he had to take special precautions against all sorts of latent defects in the instrument—this would greatly embarrass the circulation of commercial paper, and cause public inconvenience.

In order that a bill or a note should be fully negotiable, and carry this protection with it, several points must be closely observed. The payment for which it calls must be in money; not in anything else. If, for example, a note contains a promise to pay Charles Manning, or his order, on a certain day, one ounce of gold dust, or a hundred bushels of wheat, this is, in one sense, a promissory note, and Charles Manning can transfer it by endorsement; but the person who

takes it is not relieved from such possible defects in connection with it, as have been already mentioned. Paper of this kind is unusual, and public policy does not call for its special protection.

Further, the amount must be certain. A promise to pay to the payee, or his order, as much money as a third party might find to be due by the maker to the payee, would not satisfy this requirement. If the amount, as written out in words, should differ from the amount, as noted in figures in the corner of the paper, the statement of it in words is considered as being the true one. Rulings on this point are to the effect that the figures in the corner are a mere memorandum, for the purpose of convenience.

The time of payment must also be certain. A promise to pay $50 "as soon as I am able," or "as soon as I am in business for myself," will not be enough. If the reference be to some event which must happen sooner or later, that has been held to suffice; as, for instance: "I promise to pay $50, upon the decease of Jas. B. Drake." If no time of payment be named, the note or bill is held to be payable on demand, like a bank note.

The place of payment must be certain, if one be named. If no place be named, the instrument will be payable at the residence or place of business of the person who has promised to pay it. Of course, there must be certainty with regard to the persons by and to whom payment is to be made.

It is not meant that a note or a bill, which happens to be uncertain on some point on which it ought to be certain, is therefore commercially worthless. The paper may be useful

for more than one reason, although thus defective; but the feature of uncertainty deprives it, if not exactly of its negotiable character, at any rate of that peculiar element of protection and security which, as we have seen, accompanies the regular transfer of commercial paper.

One more element of certainty is requisite: the promise or request must be positive and unconditional. A promise to pay to Valentine Stubbs, or order, on a certain day, $250, "provided a certain mortgage is paid and cancelled," will not answer this description. When the condition is fulfilled, by payment and cancellation of the mortgage, the promise is undoubtedly binding; that is (See Chapter I.), if it rested on some "consideration," or equivalent. Still, although good in this way as a promise, it is not like an out and out order to pay to Valentine Stubbs, or order, at a certain date, $250. A promise to pay a certain sum of money, when the promisor's old mill is sold, is equally defective. It rests upon a condition, and the condition is such as to create an uncertainty in the time of payment as well. The old mill may never be sold; and, if it should be, no one can tell when, until the sale occurs.

The promise of payment must be absolute, not conditional; the payment must be in money, and the sum of money must be definite; the time of payment, and the person who is to receive payment, must be certain, and also the place of payment; though, as we have seen, it is not strictly necessary that time and place should be named.

In case of a promissory note, the promise is made by the person who signs it, and he is called the *maker* of it. In case

of a bill of exchange, the person who signs it is called the *drawer*, and the promise is made by the person on whom it is drawn, the *drawee*. When he consents to the request, he writes the word "accepted," followed by the date, across the face of the bill, and adds his signature, also across the face. He is then called the *acceptor*, and is said to be "primarily liable" upon the bill, just as the maker of a note is "primarily liable" upon it. This means that the promise to pay is his in the first instance, and that the holder of the bill, when it falls due, should go to him for payment.

Every one who puts his signature to commercial paper ought to write in ink, and to set down his full name, or his ordinary signature; but a signature in pencil is legally binding, and so is the signing of one's initials. If a person can not write, he may make his mark with two crossed lines, and have some one who can write set his name down for him. It rarely happens, however, that a person who is unable to write becomes a party to commercial paper.

Sometimes, one man will authorize another to sign as his agent. When this is the case, special care ought to be taken, lest the agent, by signing wrongly, should assume a personal responsibility which he does not intend to undertake. If Solomon Miller empowers Stephen Jackson to sign his name for him on a bill or note, the signature should be: "Solomon Miller, *per* Stephen Jackson, agent." If Jackson were merely to sign "Solomon Miller," that might do; but an inconvenience would arise, if some one happened to notice that the signature was not in Miller's own handwriting, and supposed it to be a forgery.

A similar rule applies where a guardian, executor, administrator or trustee has to deal with commercial paper. It is not prudent for him to sign his name, and put the word "executor," or "trustee," after it. Many persons, not knowing this matter properly, have made themselves personally liable on the paper; a thing which they had never dreamed of doing. Whoever acts in such a capacity, and has occasion to make, or endorse, or accept a note or a bill, as the case may be, should add to his name a full description of the character in which he acts; as, John Grafton, executor of the last will of George Humphrey, deceased;" "James Morehead, Thomas Griffin, trustees of the Second Presbyterian Church, of Lebanon, Kansas." A note drawn thus: "We, the trustees of the Methodist Episcopal Church in Lexington, promise to pay &c.," and signed merely by the names of the trustees, was once held to bind them individually. The Supreme Court of the United States, it is true, has said that it would be contrary to justice and truth to enforce so severe a rule in cases where the signer was fully known by the other party to be acting in a representative capacity; but the existence of danger at this point will prompt a thoughtful man to use special precaution, stating clearly the function in which he is acting. If he is making a note, under such circumstances, he should introduce the description into the body of the note, and also add it to his signature. By so doing, he will remove all opportunities of controversy on the subject.

The practice of affixing one's signature by means of a hand-stamp is open to serious objection. An impression made in this way may be a valid signature, though even this is not entirely clear. Let us suppose it to be good, and see what dan-

ger follows. Any dishonest person might manufacture commercial paper in the name of the owner and user of the stamp, and either steal the stamp itself, or have a duplicate of it made, and so supply the requisite signature. Under any circumstances, the hand-stamp either does not produce a valid signature, or it places its owner in constant peril. If a man were to go on using such a stamp in the way here suggested, it is probable that his signature, so impressed, would be sufficient to charge him with the consequences of signing, and it would make no difference, as to persons not having notice of the fact, whether the mark came upon the paper regularly or fraudulently. It is therefore important that the signature should be *written*, and not merely *stamped*. This observation applies to signatures generally, whether on commercial paper or elsewhere. It is sometimes convenient, however, where firms or companies conduct a large correspondence by means of clerks, to use a hand-stamp with a blank space for the name of the actual signer. Such use, however, ought to be restricted to ordinary letter writing. For similar reasons, letters written on a typewriter should always be signed by hand.

It is always unnecessary, and it may sometimes be mischievous, to add a seal or a scroll to a note or bill. In many of our States, such an addition will impair the negotiable character of the instrument.

A practice has become rather common in the United States, during the last quarter of a century, of inserting a clause in a promissory note, providing that in case of an action at law to enforce payment, the maker will pay so much money in addition—generally a percentage on the amount of the note—to

cover attorneys' fees. As to the validity and effect of such a clause, the courts of different States are completely at variance. In Michigan and Ohio, for example, such a provision is considered wholly bad, on the ground that it may afford a cover for usury. In New York and Pennsylvania, it is regarded as impairing the negotiability of the paper, by rendering the amount of the debt uncertain. In Illinois and Iowa, the provision in question is held to be good and valid. In Oregon, there may be a stipulation for "a reasonable sum as attorneys' fees." In view of the existence of such remarkable differences of judicial opinion, the business man ought to ascertain how the law stands in the State in which he does business, before introducing such a clause into any negotiable instrument. The same remark applies with at least equal force to clauses which contain a "warrant to confess judgment," in case the note is not paid at maturity, or a waiver of what are called "stay" and "exemption" laws. Notes which embody clauses of this description are sometimes popularly called "iron-clad."

It is usual for commercial paper to be made and transferred upon a "consideration." In other words, a man does not generally make a note, or accept a bill, or part with a note or a bill belonging to him, made or accepted by some one else, without receiving, or having received, some equivalent. Thus, when a bill is drawn by Lawson on Meredith, in favor of Norton, Lawson says in effect to Meredith: "You owe me so much money. Instead of paying it to me, pay it at such a time to Norton, whose debtor I am;" and Meredith, when he accepts the bill, says in effect to Lawson: "Yes, I do owe you so much money, and I will pay it over to Norton at

such a time, as you request." If the bill be payable to Norton, or *his order*, and Norton transfers it by endorsement to Overton, he says in effect to Overton: "I owe you so much money, and I pay you in this manner." The creation or transfer of commercial paper is almost always connected with a debt or a loan. This being the case, the law presumes every creation or transfer of a bill, note or check, to have been for value. We have already seen that the existence of such a presumption renders the words "value received" unnecessary.

Occasionally, a person will put his name on commercial paper to oblige or accommodate some one else, when he himself gets no benefit. Paper thus signed is called *accommodation paper*. The man who said he could not see, for the life of him, how the mere writing of his name on a slip of paper could make him liable for a sum of money, must have been an *accommodation acceptor or endorser*. Let us consider how far a person is liable, who signed in this gratuitous manner. Why did he put his name on the paper? The obvious answer is, that he did so to give the paper credit, so that it might be transferred more readily than if his name were not written upon it; and this answer furnishes the key to his position.

So far as those persons are concerned, who have taken the paper for value, seeing his name on it, and naturally relying on what they saw, he is not entitled to set up the fact that he wrote his name there merely for the accommodation of some one else. This is rendered still more plain, when we go back to the rule already stated, as to the protection of one who takes commercial paper in the ordinary course of business.

If the accommodation party could defend on the ground already indicated, every one taking commercial paper would be obliged to inquire beyond what appears on its face; and this inconvenience would go far to defeat the purpose for which such paper exists.

So far, at least, as the person is concerned with whom the accommodation party at first dealt, and whom he accommodated, the case is different. An agreement (See Chapter I.) is not binding, when the transaction is all on one side; the one party getting all the benefit of it, and the other getting nothing. So, if Mr. Atkinson, not being Mr. Bakewell's creditor, were to draw a bill on Mr. Bakewell, thus: "Pay to myself, or order," and Mr. Bakewell were to accept the bill in order that Mr. Atkinson might negotiate it and raise money on it, if Mr. Atkinson did thus negotiate it, the holder could collect the amount from Mr. Bakewell when it came due; but it would be manifestly unfair to allow Mr. Atkinson himself, if he should go on holding the bill, and should not transfer it to anybody else, to claim anything from Mr. Bakewell upon it, simply because Mr. Bakewell was not his debtor. This example affords a general illustration of the liability of "accommodation parties."

Where a note contains no mention of interest, it begins to bear interest at the ordinary legal rate, on the day on which it becomes due. Where it is a promise to pay so much money, *with interest*, the debt carries interest from the day on which the note is dated. It is customary to state, in a note, the rate at which interest shall be calculated, when a different rate from the ordinary rate is bargained for. In this case, the note will

read, "with interest from date until paid at the rate of — per cent. per annum;" or "with interest from maturity until paid at the rate of — per cent. per annum." The subject of interest is generally regulated by law, a legal rate being fixed. Parties may always bargain for less than the fixed rate, and, in some States, for more. In Oregon, for example, the ordinary rate is 8 per cent.; but the debtor may agree to pay as much as 10 per cent. In some States, as California, Washington and Colorado, the parties may bargain, in writing, for any rate they choose.

CHAPTER VIII.

BILLS AND NOTES, CONTINUED.

The reader is now familiar with the essential parts and features of commercial paper. We have to consider, further, the proceedings of acceptance, transfer and collection. Transfer may sometimes be effected by mere delivery, without any endorsement by the person transferring. This is when the paper is expressly payable to bearer, or when the previous endorser has endorsed in blank, and so made it payable to bearer. Such a transfer, if satisfactory to the taker, is perfectly good. The holder, who passes it to him by mere delivery, does not assume any risk with reference to the future solvency of those persons who ought to discharge the debt. He only undertakes and guarantees that the signatures on the paper are genuine, the document legally binding, and that he knows of no circumstance which renders it commercially worthless.

The liability of an endorser is much more extensive than this; and it has been stated as follows, on very high authority: he agrees with the person to whom he transfers the paper, and with every subsequent holder of it, to bind himself as to these particulars: (1) that the instrument, and all previous signatures on it, are genuine; (2) that he himself has a good title to it; (3) that he is competent to bind himself in such a contract;

(4) that the maker or acceptor is competent to bind himself to the payment, and will, on due presentment, pay the amount at maturity; (5) that if, when duly presented, it is not paid, then he, the endorser, upon due and reasonable notice being given him of this fact, will pay it himself. By the word *maturity* is meant the time when the instrument falls due. Of these five statements, the last is of the greatest importance.

A note or a bill, which is not expressed as being payable "on demand," or "at sight," is said to *mature*, or *come to maturity*, at the expiration of three days after the day named therein for payment. This is the general rule, though modified in some States by statute. These days are called *days of grace;* and, when they are gone, the paper is *overdue*. When the last day of grace falls on a Sunday, or a public holiday, presentment for payment should take place on the previous working-day, unless otherwise provided by statute.

One who transfers by endorsement is at liberty to enlarge or restrict his liability, by using proper words, in addition to his signature. Thus, if he writes "*demand and notice waived*," or adds a guaranty, he assumes a responsibility heavier than the law would otherwise lay on him. On the other hand, if he appends the words "*without recourse*" to his signature, or any words to the same effect, he lessens his responsibility. By waiving demand and notice, he says, in effect, that if the party primarily liable does not pay, then he himself will do so unconditionally. By adding a guaranty, he assumes practically the same position. By writing the words "*without recourse*," he notifies all who may thereafter take the paper, that they must not look to him for payment, if others, who ought to pay, fail to do so.

These additions do not in any degree impair the negotiability of the instrument. They only affect the liability of the endorser. He can render the instrument no longer negotiable, if he choose; as, for example, by writing over his signature, "pay to A. B. only." This is called a *restrictive endorsement.* "A. B.," in such a case, cannot transfer to any one else, but must hold the paper until it matures.

It frequently happens that a person holding a bill or note lives in one place, and the document is payable elsewhere, so that he asks some one in the latter place to make demand for him. The proper plan in such a case is to endorse, and add the words "*For collection.*" The effect of this is to check the further transfer of the paper; because any one to whom it may be offered can see that it was the business of the person presenting it to him to collect it on the endorser's account. Collections of the kind now spoken of are usually made through banks.

Negotiable paper cannot be properly endorsed away for less than the whole amount due. If Abraham Vernon happens to hold some one's note for $350, and himself owes Thomas Walters $200, it will be an awkward and unbusiness-like transaction for him to endorse in the following fashion: "Pay to Thomas Walters $200 of this. Abraham Vernon." Such a transfer will give Walters a right to hold the note; but it will check its negotiability, and the proceeding will cause embarrassment, if not loss. The maker of a note is not bound to pay a part to one person, and a part to another. He is only bound to have the amount ready, as a whole, when it falls due; and he can properly ignore any arrangement for the division of it into parts. It is not right that any such divis-

ion should be attempted. Vernon ought to have endorsed the note to Walters as a whole, and arranged specially about the balance of $150, or he should not have endorsed it to him.

Let us now suppose that Vernon did make some satisfactory arrangement about the $150, and endorsed the note to Walters, writing on the back of it, "Pay to the order of Thomas Walters. Abraham Vernon;" and that Walters wrote his name under that, and handed it to his grocer in part payment of an outstanding account, and that it fell due a day or two afterwards. Of course, the grocer, holding the note, ought to present it to the maker of it in the first place, because the note is *his* direct promise to pay, and he is "primarily liable" upon it. If the maker should refuse to pay, the holder could demand payment either from Vernon, the first endorser, or from Walters, the second endorser. If Walters had to "take up" the note, he would be entitled to recover the amount either from the maker, or from Vernon. If he could not recover it from either of them, this would not be from any defect or flaw in his legal right, but because of their insolvency.

The drawer of a bill occupies a place which is very similar to that of the payee and first endorser of a note. A bill is originally a request to pay; and the drawee, when once he responds to that request by accepting the bill, makes the instrument his promise, just as much as if he had given a promissory note to the drawer of the bill, who (as we have seen) is usually his creditor. The drawer also has a hand in the creation of the bill, and is usually liable in the second place. All parties whose names are on the paper without some

qualification, are liable to the holder; and each of them has undertaken to protect those who come after him, as we saw when we considered the responsibility of an endorser. So then, upon a note, the parties are liable, each to his successors, in the following order: (1) the maker, (2) the payee and first endorser, (3) the second endorser, and so on. In case of a bill, the order is this: (1) the acceptor, (2) the drawer, (3) the payee and first endorser, (4) the second endorser, and so on.

Circumstances may occasionally justify the acceptor in accepting conditionally. For example, he may, perhaps, at present have no funds in hand on account of the drawer, and yet he may have reason to expect that funds will come in, by the arrival and sale of a cargo of goods, or otherwise. In such a case, his safe plan is to express the condition in writing upon the bill, either close to his signature, or in some other convenient place. The payee is not bound in law to take a conditional acceptance, unless he receives the paper from the drawer with that understanding. An acceptance so unusual as this will, of course, embarrass the negotiation of the paper: a remark which applies in a greater or less degree to all special additions, restrictions or comments, which are made a part of it.

As the payee is not bound to take a conditional acceptance, so he is not bound to take an acceptance for a part only of the sum named; but such an acceptance, if taken, is good as far as it goes.

Since a bill of exchange is generally payable at a future date, the drawee is called upon first to promise to pay, which he does by accepting it, and afterwards to fulfill his promise

by actually making payment. It is possible that he may either refuse to accept, or refuse to pay when he has accepted. In either of those events, it is customary for the payee to "protest" the bill. In other words, a bill may be protested for non-acceptance or for non-payment; in which term we include a partial acceptance and a part payment. This proceeding, which is called "protest," will be explained after we consider the question of demand.

As soon as a bill or a note falls due, or "matures," the holder should present it to the acceptor or maker, and demand payment. It is not the acceptor's business, or the maker's business, to go and find the holder. This is clear enough, when we consider that the document may have been transferred by endorsement, so that the acceptor or maker cannot tell who holds it; while the holder of a bill always knows who accepted it, and the holder of a note always knows who made it.

The holder of a bill, therefore, must present it to the acceptor, when it falls due, and demand payment. Merely to mail it to him would be irregular, unsafe and unbusiness-like. The holder himself, or his clerk, or agent, should personally present it, and make demand. If the bill should be payable at a distance from the place where the holder lives, he ought to endorse it, "For collection," and hand it to his banker for that purpose. The demand ought to be made at the acceptor's place of business, unless another place of payment is specified in the bill. If the acceptor has no place of business, at his residence; and, if he is not to be found at his place of business or at his residence, as the case may be, a demand

made on the person in charge is generally sufficient, because it was the duty of the acceptor to expect the demand, and to provide for it. If, however, the acceptor has changed his address, and can be found by any one who takes the trouble to inquire for him, it will not be enough for the holder to make demand at the old address. On the other hand, where the acceptor has gone away without leaving any definite address, the holder need only make a formal demand, without further inquiry; as, for example, where the person who opened the door said that the acceptor "had gone West" week before last, or that he "had gone down the river without saying when he would return." If he *had* said when he would return, that would not mend the matter in the least, because it was his duty to have the money ready at the place when the holder called; that is, at maturity.

A bill of exchange is frequently made payable at some particular bank. Indeed, in the great centres of commerce, bills are generally drawn in this way. In such cases, the holder should make demand at the bank named, during business hours, or leave the bill in charge of that bank, to be given up when payment is made, or hand it to his own banker, who will present it for payment at the other bank. If the latter bank has closed its doors during business hours, which is a token of suspension or insolvency, this amounts to a refusal to pay, and the bill is dishonored.

Should a bill or a note be lost or mislaid, this circumstance does not constitute a good reason for neglecting to demand payment. The holder, in such a case, ought to make as accurate a copy of the paper as he can, and present that. The

acceptor, or maker, from whom payment is demanded under such conditions, ought to assure himself that the document has not passed into the hands of any other person who has given value for it; and he may reasonably delay payment in such a case as this, though he cannot lawfully refuse to pay at all. If he be quite uncertain what has become of the paper, he may decline to pay, unless the party desiring payment will indemnify him against loss arising from the accident. The usual method of securing indemnity, in this and other cases, is by executing a bond with surety. (See Chapter II.) This may be very necessary; for, if the bill or note were payable to bearer, and happened to be lost or stolen from the holder, and got into the hands of a new holder for value, in the ordinary course of business, he having no notice or knowledge of what had occurred, this new holder could lawfully claim payment, and the former holder would be the loser. When a paper of this kind is thus lost, an advertisement is sometimes put in the newspaper. Such a notice, however, does no good, unless the party to whom the bill or note is offered has read or heard of the notice. This follows from the protection which the law affords, when commercial paper is regularly taken. On this account, it is desirable to keep negotiable instruments safely locked up, especially when they are payable to bearer, either by being so expressed, or by means of a blank endorsement.

Prompt demand is not essential, so far as the obligation of the acceptor of a bill, or the maker of a note, is concerned. He is bound to pay, whether demand is made of him on the due day or not; but it is very important as regards endorsers, because an endorser undertakes, not that he will pay at all

events if the acceptor or maker does not pay, but only that he will do so if the acceptor or maker, *upon due presentment at the proper time*, does not pay, and if he himself (the endorser) is duly notified of the dishonor. The acceptor or maker assumes a continuous responsibility; the endorser is responsible only upon the performance of the conditions already stated.

CHAPTER IX.

CONCERNING BILLS, NOTES, ETC.

We have already seen that, under certain circumstances, a bill "goes to protest;" and that is, when the drawee refuses to accept, or when, having accepted, he declines or is unable to pay. Practically, however, there is seldom any protest for want of acceptance. It may be said, especially as to inland bills, that the protest of them for non-payment, in the absence of any statute requiring it, is rather convenient than necessary. By an inland bill, is meant one which is payable in the country or state in which it is drawn. A bill drawn in Pittsburg on Philadelphia is an inland bill; but one drawn in Boston on Baltimore, or in New York on Paris, is a foreign bill. Promissory notes are often protested for non-payment, although this proceeding is not required by law. It forms no part of the condition of liability, and the omission to protest furnishes no defense to an action on the note or bill. The value of the act of protest consists in its affording good evidence of the fact of dishonor, and of the giving of notice thereupon.

Let us now examine the formality of the act of protest. The holder has made demand, and has been refused; or, it may be, he has found the house, or office, or bank closed, although he called at a suitable hour. He now goes to a notary public, in whose hands he places the bill. The notary goes to the

place, and makes demand in the holder's name. Being refused, he makes a solemn statement, under his hand and official seal, of the facts of presentment, demand and refusal. This statement ought to contain an exact copy of the instrument as it is, including all endorsements. The notary does not certify that *the holder* made demand, but that *he himself* made it, and was refused. Immediately upon the dishonor of the bill, notice should be served on the drawer, and on every endorser of it. Such notice is equally necessary when a note is dishonored, in order to fix the liability of the endorsers. In many States of the Union, the statutes make it the notary's duty to serve these notices, in case of protest; and he is entitled to a fee for his trouble, usually amounting to two or three dollars for the protest, with something extra for each notice served by him.

The acceptor of a bill may live in the country, where a notary cannot be easily found. In that case, any responsible person may make the protest. The usual practice is to select for that purpose some well-known householder in the neighborhood. The person thus supplying the place of a notary ought to fulfill the notary's office as accurately as he can. He should make the demand, and note the facts of presentment, demand and refusal, under his own hand and seal, annexing a copy of the instrument, and stating that he acts in the absence of any accessible notary.

Inasmuch as prompt notice to an endorser is necessary, that he may be held liable, the holder ought to see that every endorser gets prompt notice, either from himself or from the notary; and, while a notice by word of mouth is allowed in

some jurisdictions, such a notice is unsafe and unbusiness-like at the best. The notice ought to be in writing; and a copy of it ought to be preserved. It ought to describe the instrument in such a way as to identify it; to say that, on due presentment, at such a date, payment was refused by the acceptor or maker, as the case may be; and to inform the endorser that the holder now looks to him for payment. It is convenient to add a memorandum of the place where the bill or note is to be found.

Let us now suppose the case of a bill of exchange for $900, drawn by M. C. Moulton on N. H. Nevitt, payable to Oliver Oglethorpe, or order, six months from January 10th of the present year, and accepted by Nevitt. Oglethorpe has written his name across the back, and has passed it on to A. L. Parker, who holds it. The bill falls due on July 13th, and is presented by Parker to Nevitt on that day, and dishonored; and Parker has gone to a notary public, and the bill has been protested by him. Parker now looks to Oglethorpe, from whom he took the bill, and also to Moulton, who drew it. Both of these men ought to be immediately notified. The following would be a good notice, addressed to Oglethorpe, so far as he is concerned:

CINCINNATI, OHIO, July 13, 189--

OLIVER OGLETHORPE, Esq.,
496 Main St., City.

SIR:

A certain bill of exchange, now in my possession (or, now in the possession of such and such a bank, as the case may be), drawn by Mr. M. C. Moulton on Mr. N. H. Nevitt, in favor of yourself, for the sum of nine hundred dollars ($900), payable in six months from the 10th of January

last, and by you endorsed to me, was duly presented by me to Mr. Nevitt this day, and payment was refused. Please take notice that I look to you to discharge the same.

Yours truly,

A. L. Parker.

The student can easily draw up a corresponding notice to Mr. Moulton, observing the facts, and making the necessary alterations. He will see that this short letter is specific as to every point which the notice ought to include, and that its terms are positive.

The notice must be served promptly. The holder, under ordinary circumstances, has the remainder of the day on which the act of dishonor took place, and the whole of the next working day, in which to serve it; and, if any endorser has changed his address, so as to make it difficult to find him, a further reasonable time will be allowed, so far as his case is concerned. If the notice is served at the endorser's office, it should be during ordinary business hours; if at his residence, then before the usual time at which people retire for the night. If the endorser lives in another city or town, the notice ought to be sent, at latest, by the last mail leaving the postoffice which is nearest the holder's address, on the working day next following the day on which the acceptor or maker refused payment. It is sometimes provided by statute that service within a distance of one or two miles shall be personal; that is, that the holder or his agent must call on the endorser and notify him.

As a general rule, the service ought to be personal, when the holder and endorser live in the same place; although a notice

sent by mail, and actually received, will be good. When the holder and the endorser live in different places, the holder does all that the law requires of him if he sees that the notice is correctly addressed, sufficiently stamped, and duly mailed. If the letter is never delivered, or is delivered after some delay, still the notice is legally good. There are cases in which an endorser is accustomed to get his letters at two or more separate offices, and then it is a wise precaution to notify him at each place, though a notice addressed to the office where he usually gets his business mail will generally be sufficient. It may be useful, however, to observe that in all cases where a notice has to be given, it is better to overdo the matter than to run the slightest risk on the other side. A copy of the notice should be kept, and a memorandum of the time and manner of serving it added. Attention to these precautions may prevent a great deal of controversy and annoyance.

We have now examined the incidents of the ordinary history of bills and notes, without paying attention to those curious and exceptional occurrences, in connection with such paper, which are discussed in learned and expensive law-books. If anyone wishes to know, for instance, what has been decided concerning irregular endorsements, he should consult Mr. John W. Daniel's very excellent work on Negotiable Instruments, which is published in two large volumes. There are, however, some points concerning the alteration of bills, notes and checks, which it may be useful to mention here.

Commercial paper may be altered innocently, or fraudulently. The person who makes the alteration may be the holder of it, or some other party acting without his knowledge. It is unwise, and it may be dangerous, to make any

such alteration, or to permit it. If there is a mistake on the face of the paper, or if the agreement there expressed is not sufficiently full, the alteration or addition should be made by the original writer, after notice to all parties concerned. Cases have occurred in which the holder has got into trouble by making an alteration with a perfectly honest intention. The writer of this book knew of an instance in which the holder of a promissory note, finding that interest was not mentioned, as he believed it should have been, added the words, "with interest from date." The consequence was that another party to the note, who was unfriendly to him, procured his indictment for forgery. He was acquitted, it is true, and his character was thoroughly vindicated; but he suffered much annoyance and expense and loss of time. This should be a lesson to every one not to tamper with a negotiable instrument. It has been held that an immaterial alteration makes no difference in the validity and effect of the document, while a material alteration may make a serious difference. By an immaterial alteration is meant one which does not change the meaning; and an alteration which makes the document say something substantially different from what it said at first is called material. For example, the addition of the words, "payable in lawful money of the United States," would be immaterial, because a debt is payable in that money as a matter of course, and the addition is really a piece of unnecessary foolishness. It has been further held that the tracing over of a faded name is immaterial, and the correction of an obvious error, and the erasure of words which are useless; but a prudent man will not try experiments of this kind, because they may lead to disputes.

Following out the distinction now laid down, we easily perceive that an alteration of the time when payment is to be made, or of the place where it is to be made, is material; and so is an alteration either increasing or decreasing the amount of principal or interest. It makes no difference whether the alteration be made by writing, or erasing, or cutting away; in either case, it is equally bad. The Supreme Court of the United States has stated the following rule, as well settled both in English and American jurisprudence: a material alteration in any commercial paper, without the consent of the party sought to be charged, extinguishes his liability, so far as the paper is concerned. If the alteration, besides being material, were fraudulently made by the holder, the effect would be not only to destroy the instrument for all purposes useful to him, but to wipe out the debt for which it was originally given.

When a bill, or a note, or a check, which has suffered material alteration, is transferred to a man in the regular course of business, without his noticing the alteration, the general rule is that he cannot recover upon it from the party primarily liable, though he may pursue his remedy against the one who transferred it to him, or against other endorsers. Care is therefore necessary in taking such paper, to see that it is free from alterations. There is one exception, which is of great practical value: when the person who first signed the paper has left blank spaces upon it, or has otherwise offered an easy opportunity of alteration, and the alteration or addition is so made that a careful person would not discover it, the maker or drawer, as the case may be, will be liable for the amount which the paper now represents. For example, when the

maker of a note left a space between the words *one hundred*, and the word *dollars*, and it was so changed, without any visible difference in the handwriting, as to read *one hundred and fifty dollars*, the maker had to pay the latter sum; and where a note was written partly in ink and partly in pencil, and the words in pencil contained a condition which was to be fulfilled before payment should become due, and these words were rubbed out, he was obliged to pay the amount unconditionally, when the instrument was presented to him by a person who took it without any notice of this alteration. These examples show the great necessity of care in making a note or drawing a check. This should be done wholly in ink; and a waving line drawn along any blank space. All words and figures ought to be very plainly written.

Whatever has been here said about alterations goes to discourage them. Even such alterations as the law calls "immaterial" ought not to be made, and paper which has been altered should be refused.

Our attention must now be directed to certain instruments, other than bills of exchange and promissory notes, in which description are included coupon bonds, bills of lading, certificates of deposit, warehouse receipts and bank checks, with one or two other kinds of paper.

A coupon bond consists of a document under seal, containing a promise to pay so much money in so many years, to which are annexed a number of small notes called coupons, containing promises to pay interest from time to time on the principal sum. During the civil war, the United States issued large numbers of these coupon bonds, some of which were

called "Five-twenties," because they were payable in twenty years, and bore interest at five per cent.; and others were called "Seven-thirties." Bonds of this description have also been issued by individual States, by cities, towns and counties, and by companies or corporations of various kinds, both in this country and abroad.

Caution is necessary in dealing with coupon bonds, because some of them are completely worthless, and others are worth only a small amount. As to this, the quoted market prices are a useful guide. United States bonds are not as common as they once were, and are likely always to head the list in respect of security. The bonds of a State have this disadvantage: if the State declines to pay them, there is no means of compelling payment, for reasons connected with what is called *sovereignty*. Bonds issued by cities or counties are commonly called municipal bonds. A city or a county has no power whatever to issue such bonds, unless under legislative authority; and the bonds, if issued at all, must be issued for public purposes only. In the absence of these conditions, they are void and valueless. It follows that any one who thinks of paying money for a municipal bond, or receiving one as security for a loan, should carefully ascertain whether the bond is a valid one or not. Bonds may properly be issued to enable a city to construct gas works or water works, to erect a town hall, to improve or grade streets, to furnish necessary fire engines, and the like. Municipal corporations, such as cities and counties, have frequently contributed to the construction of railroads which were likely to benefit them, by the same means. Bonds so given, under legislative authority, have generally been held good; but, inasmuch as disas-

trous consequences have sometimes followed the creation of them, by reason of the rascality of fraudulent projectors on the one hand, and fraudulent local officers on the other, a provision has been inserted in some State constitutions, preventing the further creation of any such indebtedness. Bonds given by a city or township, to secure a grant or subsidy for the location within its limits of a new mill or factory, are not good, because this is not properly a public purpose, however much the new enterprise might indirectly benefit the place and its inhabitants.

A bill of lading is a written acknowledgment by the master or owner of a vessel, that certain specified goods have been received on board, and are to be carried and delivered at a port named therein, to a person also named therein. The sender of the goods is frequently called *the consignor*, and the person to whom they are sent is *the consignee*. Sometimes, the consignment is made to the consignor's own order. The term, bill of lading, is frequently, though incorrectly, applied to a carrier's receipt where goods are transported by land.

Bills of lading are transferred by endorsement and delivery. The endorsement may be conditional or restrictive, if the endorser chooses to make it so. They are, therefore, in a sense, negotiable; but the element of security, of which we have previously spoken, does not accompany them. A bill of exchange, bearing a blank endorsement, is good in the hands of a person who takes it regularly, although lost or stolen from a prior holder; but a bill of lading is not good under similar circumstances. He, therefore, who takes a bill of lading by endorsement, ought to acquaint himself with the history of it.

A warehouse receipt, as the name implies, is a document acknowledging the receipt of specified goods, which the warehouseman is to deliver to the depositor, or his order. Though it differs in some respects from a bill of lading, it resembles it in the points already noted. The statutes of some of our States deal with warehouse receipts, and the reader should consult the statute on this topic, if there be one, of the State in which he lives.

A certificate of deposit is the receipt of a bank for a certain sum of money entrusted to it. It is usually equivalent to a promissory note of the bank, whereby it undertakes to pay so much to the depositor, or his order. Questions concerning the negotiability of such certificates depend very much on the language in which they are expressed.

A bank note, or bank bill, is the promissory note of the bank, payable to bearer on demand, just as a dollar note of the United States is the promissory note of the government. The value of a bank note depends on the solvency of the bank which issues it, unless, as in the case of the currency of our "national banks," it be secured by a deposit with the Treasurer of the United States, or otherwise. In some States, no banks except the "national banks" are allowed to issue bank notes.

CHAPTER X.

CONCERNING BANK CHECKS.

A bank check has been defined as follows: it is an order upon a bank for the payment of a certain sum of money, upon demand, to a certain person therein named, or to his order, or to the bearer. It purports to be drawn upon a deposit of funds, which the drawer has placed in the hands of the bank.

A check, therefore, resembles a bill of exchange in some of its principal features. It is in form a request, rather than a promise. It involves the existence of a drawer, a drawee, and a payee; though here, as in a bill of exchange, the drawer and the payee may be the same person. ("Pay to myself or order.") On the other hand, a check is almost always payable on demand, while a bill of exchange is generally payable at a future day. There are no "days of grace" in case of a check, though there are in case of a bill of exchange; and a man may sometimes very properly draw a bill upon another, although the latter at present holds no funds on his account, while a check drawn upon a bank in which the drawer has no deposit, and which has not promised credit, is generally a fraud from the beginning. So there are points of resemblance, and also points of difference, between checks and bills.

A check is usually dated on the day on which it is drawn; but, occasionally, it bears a different date. When a check is

actually drawn, and handed over to the payee, on the 15th day of June, it makes little difference whether it bears date of the 15th, or of the 10th, because in either case it is payable immediately on demand; in such a case it ought to be dated the 15th. If the check, drawn on June 15th, were dated June 20th, it would be a "post-dated" check, and would carry on the face of it a notice to the bank not to pay it until the 20th. The practice of post-dating a check is now and then very useful, when the person drawing the check is not sure about the value of that which he is to get in exchange for it. If he gives a post-dated check for something which he buys, and finds that the seller has cheated him by misrepresentations concerning the thing thus bought and sold, he can stop payment of the check at any time before the date it bears. The way to stop payment is to write a note to the bank, describing the check, and requesting that it be not paid.

* * * A certain farmer had a bank deposit. An agent for the sale of agricultural machines called on him, and persuaded him to try a patent reaper, which could be delivered in ten days, and of which he showed him a drawing. By way of payment, the farmer gave his promissory note, payable to the agent, or his order, although he had not yet received the machine. When it came, it turned out to be worthless, and materially different from the drawing. As between him and the agent, the farmer could have defended on the note by showing that the agent had cheated him. Unfortunately, the agent had transferred the note to some one else, in the regular course of business, so the farmer had to pay the money to the holder, thereby sustaining a considerable loss. If he had given his check, payable to the agent only, and dated it a fortnight ahead, he would have secured himself. In that case, whether the reaper did not arrive at all, or whether, when it came, it turned out to be different from the description and the warranty, he could lawfully have recalled the check.

The person who takes a check ought to present it for payment as soon as possible, for his own security. In dealing with merchants and banks of good commercial standing, there may not be much danger in delay; but there is always a possibility that the drawer of the check will draw other checks which will exhaust his deposit, or that the bank itself may become insolvent. The check, being payable at the date it bears, is intended to be promptly presented, and not to lie in the holder's pocket-book or safe, like a coin or a ten dollar bill.

If a bank refuses to pay because the account is already exhausted or *overdrawn*, the holder can, of course, demand payment from the maker, whose duty it was to provide and keep funds for its discharge in the hands of the bank; but it may be much more difficult for the holder, who neglected to present the check promptly, to collect from the maker, then it would have been for him to have gone to the bank and got his money at first.

Besides this, as we have said, the bank may become insolvent. In view of this event, it is particularly important to notice what is meant by prompt presentment. If the holder presents the check on the day on which he gets it, or during banking hours on the next working day, he will be considered as doing so in reasonable time. He has a whole day at his disposal, and something more. If he gets the check early in the forenoon, he has nearly the whole of two days. If the bank on which the check is drawn is at a distance, he has the remainder of a day, and the next working day until the mail closes, in which to send it away for collection; and the person or bank to whom it is thus sent has the remainder of the

day on which he receives it, and the whole of the next working day, on which to present it. If demand is made within a reasonable time, according to the rule now laid down, and payment is refused because of the failure of the bank, the holder can require the drawer of the check to pay it. If demand is not made within a reasonable time, and the bank fails before the check is presented (the drawer having had funds there with which to pay it), the holder must bear the loss, because it resulted from his own negligence.

To put the matter in another shape: the drawer of a check undertakes that he has funds in the bank which are to be applied to its payment, and that the bank will remain solvent during a reasonable period, within which the check is to be presented. He does not undertake, so far as that check is concerned, that the bank will continue solvent indefinitely, though he does undertake that *he* will not impair the value of the check by withdrawing his deposit.

We have seen that a check bears some resemblance to a bill of exchange. When a bill of exchange is payable on demand, it is usually not accepted when presented to the drawee, but simply paid. The act of payment in that case includes the notion of acceptance. Acceptance is a promise to pay; and if the drawee actually does pay, no express promise on his part is necessary. And so it is with a check, which, being payable on demand, is usually not accepted. A practice has grown up within the last twenty years, however, by which banks really do accept checks drawn on them. This is the practice of *certifying* checks; and the manner of doing this is for the bank cashier to write the word *good* across the face of the check, and add his name. The

transaction is as much as to say: "This bank has money, on account of the drawer of the present check, sufficient to pay it; and the bank will take care of the necessary amount, and will appropriate it to that particular purpose." In fact, the bank, having money in hand belonging to the maker, immediately debits his account for the amount named in the check, assumes the payment of the latter at any time it may be presented, and thus virtually transforms the check into a bank note.

There is a difference between the accepting of a bill, and the certifying of a check. In the former case, the drawer is liable, upon failure of the acceptor to redeem his promise. In the latter case, the liability of the drawer is wholly gone. This is thoroughly reasonable; because, where the document was a check, the payee could have had his money if he wanted it, but preferred to take, instead of it, the promise of the bank.

The act of certification being one of serious responsibility, it is not every officer of a bank who is empowered to perform it, but only the cashier or the teller. In America, the principal officer of the bank is usually called the cashier. He has the general superintendence of its business, and the charge of all its funds. The whole financial operations of the bank are conducted through him. It is his duty to see that debts due to it are collected, to lend or borrow on its account, and to accept or refuse such deposits as may be offered. Large banks have assistant cashiers, who act under instructions from the principal one. The teller is a subordinate officer who receives and pays out money. These duties, however, are generally separated in banks doing a large business, there being one or more tellers for receiving, and one or more for paying. In

England, the chief executive officer of a bank is called the manager. Some American banks follow this custom.

There is one important limitation of the power of certifying. No bank officer is permitted to certify a check drawn by himself; and the act of a cashier or a teller, in attempting to do this, would not bind the bank. In other words, a check drawn by the cashier, and certified by him, would be no better than an ordinary uncertified check, and would not be equivalent to a bank note. It would be dangerous to adopt a different rule.

The bank is bound to know the signatures of its customers, and usually keeps a book in which they write their names for the purpose of comparison. Consequently, where a check is altogether a forgery, or where the signature to it is forged, the bank, if it fails to discover that circumstance, and pays the amount on presentment, cannot usually charge the party whose name has been forged with the amount so paid. It is generally held that the bank, under such circumstances, cannot recover the money from the party to whom it has been paid. Hence, much care is required from the paying teller, lest he cause the bank great loss by paying forged checks. If the fault, or fraud, or negligence of the holder, or of the apparent drawer of the check, were an element which contributed to the misfortune, then the rule is different, as indeed it ought to be.

While the bank is thus bound to know the *signature* of each of its depositors, the fact that the body of the check is in a different hand is not enough to put the teller on his guard, because business men frequently instruct their clerks to fill out checks for them to sign. Persons occasionally sign checks

without filling in any amount, leaving others to fill in the amount as occasion may require. This is a very unbusiness-like practice, and any one who adopts it runs a continual risk of loss. If the signature is genuine, and the body of the check displays no irregularity, the bank cannot be blamed for making payment; and where a check has been "raised" by the skillful filling up of blank spaces, and the signature is genuine, the loss will properly fall on the drawer, because it originated in his negligence. A striking example, illustrating these points, occurred some years ago in England. A gentleman, who had a bank deposit, was obliged to go away from home. He left with his wife several checks signed in blank, telling her that she could fill them with such amounts as she might from time to time need. She soon had occasion to fill one in for "fifty-two pounds and two shillings." Not being accustomed to deal with commercial paper, she wrote the amount, "fifty-two pounds and two shillings" with a small 'f', leaving a considerable space before it. She also left room for another figure before the 52. She then handed the check to her husband's clerk, asking him to get the money. He wrote "Three hundred and" before "fifty-two" where it was expressed in words in the body of the check, and inserted a 3 before the 52 written in figures. The bank paid him three hundred and fifty-two pounds and two shillings, out of which the clerk kept three hundred pounds (or about $1458) and shortly disappeared. Upon his returning home, the depositor objected to be charged with the full amount, and went to law about the matter; but the court decided that he was in the wrong, because he and his wife together had put the opportunity of dishonesty so completely in another person's power. He ought not to

have signed the checks in blank, when he might have adopted some other means of keeping his wife in funds. Or, if he was determined to do so careless a thing, he should at least have told his wife how to fill up the amounts. This incident carries with it a highly useful lesson.

Checks are usually given by a debtor to a creditor in discharge of a debt. The giving of a check is not of itself payment, even though the drawer has funds in the bank ; because (as we have seen) he is bound not only to have funds there, but also to guarantee the soundness of the bank during that reasonable period within which the payee ought to present the check. The giving of the check, and the receiving of it, make a conditional payment. That is to say, the debt is discharged if the check is duly paid ; or if, after the proper time for presentment, and before presentment takes place, the bank should fail.

A check is never a "legal tender." This means that the person to whom a check is offered in discharge of a debt is not bound in law to take it. He can require payment of the amount due him in cash ; but, as creditors are usually glad to be paid at all events, they do not frequently object to receiving checks, and the check system is a great accommodation to the public. The term "legal tender" comprises gold and silver coin of the United States, and Treasury notes, but not national bank notes (secured though they are by a deposit at Washington), nor any of those kinds of negotiable paper with which we have dealt.

Although a check is not a "legal tender," the person taking it in conditional payment of a debt runs very little risk ; be-

cause, even if payment is refused upon prompt presentment, he is no worse off than he was at first. When a check is offered in payment of a bill of exchange or a promissory note, some caution is desirable. Upon the discharge of a bill or a note, it is customary for the holder to give it up to the person making payment; and it is plain that the holder runs some risk in surrendering his bill or note in exchange for a document which may possibly turn out worthless. Much depends on the parties with whom one is dealing. If the maker of the note, or the acceptor of the bill, is not a person of recognized credit and stability, the safe plan, though it may involve the giving of offense, is for the holder not to part with the note or bill until he is paid in cash; and, where one person acts as the agent of another for the purpose of collecting the amount due on a note or a bill, he cannot, with entire safety to himself, take a check in exchange for it. If he does so, he should use special diligence in speedily turning the check into cash.

CHAPTER XI.

CONCERNING THE COLLECTION OF DEBTS.

All questions which have to do with the collection of debts are of great practical importance. Under this topic, we class Limitations, Attachment, Liens and Exemptions. Inasmuch as these subjects are everywhere regulated by statutes, they cannot in this work be pursued into their details. The reader must obtain special instruction or information concerning the law of the State in which he lives or does business.

Debts are either secured or unsecured. A debt is said to be secured, when the creditor takes a mortgage, or pledge, or guaranty, or some other security for its payment. Otherwise, it is said to be unsecured. Where some friend of the debtor guarantees the payment of the debt, which is as much as to say that if the debtor does not pay it, then he himself will do so, this promise must be in writing ; and it ought usually be made when the credit is given, or when the creditor is about to sue the debtor, and the promise holds him back. The person making such a promise is called the guarantor.

A debt may be perfectly valid and binding at first, and yet it will not always remain so. If the creditor fails to take legal proceedings for a certain time, the debt will be "outlawed" by what are called Statutes of Limitations. When it is once thus outlawed, the debtor is allowed to plead that the debt

was not created within the last six years, or whatever the period may be ; and that is a good defense. No amount of mere dunning will help the creditor to keep the obligation alive. He must do more than simply request payment. He must institute an action at law to recover the debt. It does not follow that he need *prosecute* the action without further delay; but he must *commence* legal proceedings within the statutory period. It may be dishonest on the debtor's part to take advantage of the creditor's long indulgence ; but the law discourages stale claims for several good reasons. The period of limitation as to actions on ordinary contracts is generally five or six years ; but, in some States, it has been cut down to three years, or even two. On writings under seal, such as bonds, the period is usually ten years, at least.

When the statutory period has gone by, the creditor is not prevented from bringing his action ; but the debtor, if he chooses, can plead the statute, and defeat the claim. There are, however, some circumstances which help the creditor. If the debtor has made a payment on account, or has paid interest on the debt, or has promised to pay it, though it was outlawed, the period will begin again from the date of the payment or promise, just as a clock which is wound up begins to run afresh. Where a promise is relied on, it is desirable, and in many of our States necessary, that it should be in writing ; and it is a good point on the side of the creditor to obtain a part payment, however small, as well as a new promise to pay the whole debt, if he can.

The subject of attachments is complicated by much variation in local laws. An attachment is a proceeding by which a defendant's goods are taken in charge by a sheriff or other legal

officer, to secure the plaintiff or creditor in case he establishes his claim. The person applying for an attachment always has to give a bond for the indemnifying of the defendant, in case the claim turns out unsound; because, if that be so, he has put him to unnecessary annoyance, embarrassment and loss. An attachment usually issues when the debtor or defendant lives out of the State, but has goods in it; or when he has absconded, or is about to abscond, or is concealing his property and evading his creditors. In some States, a creditor whose debt is unsecured is allowed to apply for an attachment when he brings his action; but this is not the case generally. The ordinary rule is that the creditor of a debtor who is not acting fraudulently must bring his action, and get judgment, and have an execution issued upon that judgment; and then the execution, if unsatisfied by payment, is followed by a sale of the debtor's goods. Where there are several creditors, there is usually a race between them for the priority, either in issuing the attachment, or in procuring the judgment and issuing the execution, as the case may be. The execution is the act of the law in taking property and selling it to satisfy the judgment, unless payment is otherwise made. The officer conducting the execution is the sheriff, deputy sheriff, or constable. The execution proceeds in the first place against the personal property of the debtor, and then against his real estate, if he has any. By real estate, we mean land and houses, as a general thing; and by personal property, everything else that a man owns.

The law, however, does not permit a creditor to strip his debtor of all he possesses. Every State in the Union has its statute regulating exemptions. By an exemption is meant a

provision of the law, in virtue of which certain things are not to be taken on execution, and are therefore said to be exempt. There are few topics as to which the local statutes vary more than they do as to this. Let us take two extreme examples: in Maryland, wearing apparel, books, tools and other property are exempt, to the value of $100; in Texas, the debtor may claim 200 acres of country homestead, or $5000 worth of city homestead, and a miscellaneous assortment of personal property, including household furniture, tools, books, pictures, and about fifty animals of specified kinds. From this it would appear that Maryland is a good State for creditors, and Texas an agreeable home for debtors. In some States, a debtor is allowed to waive his exemption, when the debt is created; in others, he is not allowed to do so. By waiving an exemption, is meant that he binds himself not to take advantage of it; that he will not hinder any levy and execution on the goods, although they are specified in the exemption law. In those States where this waiver is permitted, promissory notes are frequently made out on printed forms, which contain a clause expressly waiving the benefit of any exemption. That condition of things is perhaps the best where the rule is neither very harsh nor very lax; where a creditor is not allowed to reduce his debtor to absolute pauperism, and where a debtor is not allowed to retain an unreasonably large amount of property, and laugh at his creditor. The exemption laws generally relate to contract debts only, and not to claims arising from wrong-doing, apart from breach of contract.

It does not follow, because a debtor is at present worth very little, that one's claim against him should not be prosecuted. There are, of course, many cases which are not worth "pow-

der and shot;" but it does not cost much to reduce a valid claim to the shape of a judgment at law, especially when no defense can be made to it. The creditor who has thus reduced his claim to a judgment, and is called a judgment-creditor, can hold it over his debtor, and enforce it by execution, if the debtor afterwards comes into the possession of property, subject, however, to any exemption which the debtor may have a right to claim. Even if the debtor moves into another State, the judgment may be useful; because, if he acquires sufficient property in his new home, a transcript of the judgment can be sent after him, and proceedings taken to enforce payment. The Constitution of the United States provides that "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State;" and Congress has provided means for carrying this provision into effect. A judgment at law, of course, comes within the phrase, "judicial proceedings."

Besides this, a judgment constitutes a lien on the debtor's real estate, if he has any, subject, however, to homestead exemptions, if such there be. This needs to be explained. The judgment attaches itself to the land in such a way that the land itself is responsible for it; and whether the debtor continues to hold it after the judgment, or deeds it to some one else, makes no difference. In some States, the judgment constitutes a lien on land subsequently acquired by the debtor; in others, on that only which he holds at the date of the judgment. The lien usually remains good for a fixed period of years, and can be prolonged by a revival of the judgment before the end of that period; but there is so much diversity in the State laws with reference to judgments and judgment-

liens, that general rules can with difficulty be laid down. Besides this, the necessary procedure can be managed correctly by no one without legal knowledge and experience. All, therefore, that a creditor need do is to remember that a judgment can be made to follow the debtor, and may attach itself to his land; and to take good legal advice when the necessity for it arises.

The ordinary or "common law" lien is much simpler than the lien of a judgment. Generally speaking, it is the right which a workman has, when he does work upon some article placed in his charge for that purpose, to hold it until he is paid. If you take your coat to a tailor to have a new lining put in, the tailor, having completed his job, is not legally obliged to hand over the coat, unless you pay him. If he does let you have the coat, although you have not paid him, the debt remains, but the lien is gone. Such a lien as this, supported by possession of something of value, may be an efficient means of enforcing payment. We have already seen that the unpaid seller or vendor of merchandise, when he sold for cash, could retain possession of the goods disposed of until the cash was actually paid to him. This right on his part is called the vendor's lien. A common carrier has a lien on what he carries, for the amount of the freight. An innkeeper has a lien on his guest's baggage, for the price of his entertainment. An agent or commission merchant, who handles produce for farmers or planters, and sometimes makes advances to them, or incurs expenses on their account in other ways, has a lien on the wool, or cotton, or fruit, or whatever they consign to him, and on the money for which he sells the produce, for the amount of his just claim.

These are the principal kinds of common law liens. In each case, continued possession is necessary, as in the example of the tailor and the coat, except that, inasmuch as the commission merchant is employed to sell produce, he can pay himself out of the sales which he makes. The continued possession of a debtor's goods by his creditor, however inconvenient it may be to the former, does not of itself enable the latter to get his money; and statutes generally provide for advertisement and sale after a given time.

Persons who supply material or work for the building or repair of houses have not the possession of the thing which they improve, and therefore have not any ordinary lien. Their position has been greatly helped by the passage of what are called Mechanic's Lien Statutes. It is not sufficient for such persons merely to be able to show that they have done work, or supplied materials. They must take such proceedings as the local statute requires, usually by filing a statement of the claim, within a certain period, in the office of the county clerk or recorder of the county in which the land lies, whereon the improvement was made. The statutes concerning this topic vary considerably in different States, and must be closely examined and followed.

It occasionally happens that a creditor knows of persons who owe money to his debtor, or hold property of his in their possession. It has long been the practice, when the creditor institutes legal proceedings for the recovery of the debt, for him to "attach" this money or property, and to give notice to the persons who are under obligation to his debtor in respect of it. This notice or warning is called "garnishment;"

and the person who receives it is called a "garnishee." Upon being thus notified, he is bound to keep the property in his hands, or to refrain from making payment of the money he owes, and to hold this property or money for the satisfaction of his creditor's creditor, who issued the attachment. If the claim under which the attachment was issued should prove bad, the attachment will be "dissolved," and things will then be as they were at first.

CHAPTER XII

CONCERNING PARTNERSHIP.

Partnership is an association of individual persons, for the purpose of common gain. Each of these individual persons contributes something to the common stock, in order to secure this object. Gain may arise from manual or mental labor, or it may arise from the use of money in buying and selling, lending and borrowing. It usually arises from a combination of several of these things. The profit made in a store arises partly from the possession of capital to buy goods with, partly from experience and judgment in buying, and partly from work in handling and selling the goods.

Partners usually contribute separate shares of capital to the common stock, and also agree to work together; but this is not always the case. Sometimes, one will invest capital without undertaking any regular personal service, while others contribute money and work, or, it may be, work only. It is necessary that each partner should contribute something towards the success of the enterprise; but the contribution of one need not be the same as that of another, either in kind or amount. The division of profits ought to bear a proportion to the value of that which each partner puts in. This question, however, is settled in most cases by mutual agreement. If there be no special understanding about it, the law will usually presume that the partners intended to divide the profits equally.

There is no provision of law which positively requires that an agreement for a partnership should be in writing; but this kind of agreement frequently involves so much opportunity for differences of opinion in matters of detail, and the consequences flowing from the relationship thus created are frequently so serious, that articles of agreement ought to be drawn up, as a matter of mere prudence.

These articles ought to specify the names of the parties, the period during which the partnership is to last, and the kind of business in which it is to engage. The period ought to be specified; because, if that is left open, any partner can withdraw when he chooses, though he cannot, by withdrawing, rid himself of responsibility for liabilities already incurred. The kind of business ought to be stated as precisely as possible; otherwise, a partner may be led into risks which he never intended to assume. If the profits are not to be divided equally among the partners, the manner of their division ought to be stated accurately; and the amount and kind of each partner's contribution should be stated, together with the nature of the duties which any of them undertake to perform. It is occasionally provided that one partner only shall sign the name of the firm to commercial paper. Such a provision may be very useful, especially in preserving the interest of those who supply most of the capital. But the formation of the partnership involves the notion of mutual agency. In other words, each partner, because he is a partner, has the power of acting, in ordinary business transactions, so as to bind the whole firm. If the firm is engaged in commerce, this power includes an apparent authority to execute and endorse commercial paper. The consequence is this: if the articles of agreement, into

which the members of the firm of Brownlow, Canfield & Dixon have entered, provide that no one except Mr. Brownlow shall make notes, draw or accept bills of exchange, or endorse any negotiable paper in the name of the firm, and if, notwithstanding this, Mr. Canfield signs the firm name to a promissory note, and the holder of the note knows nothing about the private agreement which has been made, and has taken the paper regularly, the firm will be obliged to pay. Any unpleasantness that may arise from Mr. Canfield's breach of the articles of agreement must be adjusted among the partners themselves. Were the rule otherwise, the transfer of commercial paper, which it is desirable to encourage, would be embarrassed. Any one, to whom paper bearing a firm name might be presented, would have to inquire whether the partners had made any special agreement as to the point in question; and, if they had, whether the signature was made by the partner privately authorized to sign. A somewhat ordinary case arises in the following manner: a partner gives a note in the name of the firm, for his own personal indebtedness. He ought not to do this, as a matter of course. If he gives a note at all, it should be his own note. The person who takes the note, signed by him in the name of the firm, ought to know that such a proceeding is irregular; and if he goes on holding it until it falls due, and then demands payment from the firm, the firm may very properly say that the indebtedness is that of the partner who signed it, and that he must pay it out of his own pocket; but, if the note had come regularly into the hands of some person who did not know how it originated, then the firm would have to pay it, and its only remedy would be to charge the transgressing partner with the amount.

A partner who takes no active part in the management of the business is called a silent or dormant partner. Such a person usually has an interest in the concern in virtue of capital put in by him, and is as fully responsible for the debts of the firm, and as fully entitled to a share in its profits, as if he contributed both money and work.

It occasionally happens, though not often, that a person will lend his name to a mercantile concern to gain credit for it, though he has no real interest in the business. Under such circumstances, he is said to be a nominal partner. His position with reference to the firm is very much like that of an accommodation endorser of a note or bill. He gets no benefit out of the transaction, but he cannot escape liability on that account, since those who dealt with the firm did so, in part at least, on the faith of his being a member of it.

It would be contrary to good sense and justice to compel any one to associate in business with some one else with whom he has no wish to associate. Several important consequences flow from this principle. Three partners out of four cannot introduce a fifth partner into the firm, without the consent of the fourth. If one partner sells out his interest and retires, neither of the others can be obliged to remain together; and the case is the same when one of them dies. Changes of this kind are said to cause a dissolution of partnership. In very many cases, the remaining partners agree to go on, so that the dissolution is only momentary, like the dividing of a stream of water, which at once closes up again. If one partner dies, his interest passes on to those who represent him, and they are entitled to call for an account, and to claim his share of the profits down to his death. It is not unusual for a partner to make

his will, leaving so many thousand dollars in the firm for the benefit of his family. If this arrangement is consented to, the persons thus benefited become dormant partners.

It sometimes happens that a difference of opinion occurs between the members of a partnership, concerning the prudence of engaging in some particular transaction. In that case, as a general rule, the vote of the majority will determine the matter. This vote must be taken after a fair consultation, in which the minority have had an opportunity of speaking. As Lord Eldon once said, there must be a voice called for from the minority, and submitted to, and fairly over-ruled by, the majority. This rule, of course, does not apply to the details of every-day business, but to special and important bargains, such as naturally require deliberation. Inasmuch as the law presumes an equality of interest and of power among partners, when nothing appears to the contrary, it is occasionally desirable to provide, in the articles of agreement, for such difference in the voting power as will make the authority of each individual more nearly correspond to his contribution.

Further, in order to give effect to a vote of the majority, the transaction in question must be within the scope of the objects originally contemplated in the partnership. If it lie outside of these objects, any partner, however small his interest, may refuse to yield. A firm whose business is with hardware does not usually buy and sell rice. If an opportunity presents itself to such a firm to purchase an invoice of rice at a low figure, this may be done by common consent; but, if one partner should object, he cannot be forced into such an adventure.

Where money is borrowed by a partnership for partnership use, or by any partner for his own use, the transaction needs no explanation. But money is sometimes borrowed by a partner for the use of the firm, or, less frequently, by the firm for the use of a single partner. In such cases as these, the lender of the money must look for repayment to the person or persons to whom he gave credit when the loan was made, and cannot go beyond that transaction, so as to charge the ultimate user or users of the money. A close examination of the circumstances may be necessary, to determine the point upon which the question turns.

Any one partner, in a commercial partnership, as we have seen, has authority to act for the firm, and to bind it, in matters of ordinary business; but this authority does not extend to acts of an unusual kind. One partner may buy such goods as the firm handles, sell them, give the purchaser a warranty of quality, receive payments, give receipts in the name of the firm; and (in the absence of special agreement and notice to the contrary) he may sign the firm name to commercial paper. He cannot, however, without the concurrence of his associates, confess judgment in the name of the firm, or submit a controversy to arbitration, or execute a bond whereby the firm becomes a surety, or make a deed of real estate belonging to it. The line between ordinary and extraordinary acts, with reference to this limitation of a partner's power, is tolerably well defined; though, on some points, the courts are not unanimous. The four things last stated, which one partner cannot do by himself, are all of so great importance, and of such infrequent occurrence, that the law and common sense point to the same conclusion. The act of confessing judgment, for

example, means that the party acknowledges the debt or default with which he is charged, and will not put the claimant or plaintiff to the trouble of proving it. This is plainly a thing which ought not to be done in the name of a partnership, unless all the partners consent to it.

Debts which are owing from the firm ought, of course, to be paid by the firm, while each partner is responsible for his own private debts. If one partner becomes insolvent, or if the firm cannot pay off its whole indebtedness, or if both of these misfortunes happen at once, it becomes necessary to examine the method of adjusting the claims of creditors.

Each partner, besides such private property as he may own, has an interest in the firm ; and every partner in an ordinary firm is liable, together with the others, for the whole indebtedness of the concern. If one partner becomes privately indebted, so that he cannot pay all his creditors in full, they can get judgment against him, and take, in the first place, his private property ; and, in the second place, his interest in the firm : that is to say, after exhausting so much of his private property as is not exempt from execution, they can take proceedings by which an account will be obtained from the firm, and his share will be ascertained, and the value of it applied to the payment of his debts. If the firm itself becomes embarrassed, so that it cannot pay all its creditors in full, these claimants can get judgment against it, and take, in the first place, the stock in trade, and such other personal property of the concern as can be found ; and then its real estate, if any. They can also "garnish" such debts as are due to it ; and, if all this is insufficient, they can have execution issued against the private property of any or all of the partners. Should one

partner be thus obliged to pay more than his proper share of the joint indebtedness, he can call on the others to repay him to the extent of this inequality. This claim on his part is called his right of contribution : that is, his right to compel his fellow-partners to contribute. The contribution thus coming from the other partners should be in proportion to the interest which each has in the concern.

The creditor of an individual partner, who fails to obtain payment from him, has no right to take in execution any specific piece of property that belongs to the firm. He can only make his debtor's interest in the firm answerable for the debt; and that interest is ascertained by means of an account. For example, where a drugstore is carried on by three partners, the cases, counters, and stock in trade do not belong to any one of them separately, but to all of them jointly. This, at least, is generally the case. If a partner who has run into debt has a valuable piano in his house, that piano may be seized and sold on execution, unless rendered exempt by statute ; and, if other persons owe him money, and the creditor knows it, he can "garnish" them ; but he cannot take in execution a costly show-case which is in the store, and which his debtor may have put into the partnership as a part of his investment. Under such circumstances, he must instruct his lawyer to call for a statement of the affairs of the drugstore, and find out what is owing from it to the debtor, in the manner prescribed by law.

CHAPTER XIII.

PARTNERSHIP, ETC., CONTINUED: TRADE MARKS.

A partner who retires from the firm cannot, of course, by the act of retiring, rid himself of responsibility for such debts as the firm may happen to owe. If he could, no one would be safe in dealing with a partnership and giving it credit. If the retiring partner wants to relieve himself from liability for debts which may be incurred by the firm after he goes out of it, he must be careful to notify those persons who have done business with the firm that he is no longer connected with it. Unless they know that he has retired, they may go on giving it credit on the reasonable supposition that he is still a partner. Whatever private arrangements have been made, in this or any other matter, will not be allowed to affect strangers injuriously, however good they may be as between the partners themselves.

A convenient way of discharging the liability of a retiring partner, if the creditors of the firm will consent to it, is this: the amount of indebtedness to each creditor being ascertained, the partners who remain in the firm make their note in favor of each creditor, or accept a bill drawn by him; or, where the name of the firm is changed, one of the remaining partners makes the notes, or accepts the bills, in the new name of the firm. The creditors are at liberty, however, to refuse to discharge the outgoing partner in this or any other way, until their claims are fully paid.

We have seen that a partnership is dissolved when one of the partners dies. This may also be the case, under some circumstances, when he assigns his interest; and the same result follows the bankruptcy of one partner, or his insanity. In most cases of this description, the remaining partners immediately re-unite, and the dissolution is only momentary. There may at any time be an agreement to dissolve, which, however, will not make the slightest difference as regards existing obligations of the firm to third parties. A partnership will be dissolved by the expiration of the period for which it was created, if the parties do not continue it after that period. It happens, in rare instances, that the purpose of the partnership becomes impracticable, or that the mode of conducting the business is such as to threaten financial ruin, and yet one obstinate or fraudulent partner insists on going on with it. There is a remedy for such a difficulty: the partners who wish to have the concern wound up can apply to a court of equity, and obtain a decree of dissolution. In a case like this, legal advice is very necessary.

What has now been said on this topic relates to ordinary commercial partnerships. In many States, there may be such a thing as a "limited" or "special" partnership. This is an arrangement by which a person can put so much money into a trading concern, and derive a corresponding profit from it, without being liable to lose a dollar more than he puts in. The advantage of such an arrangement is obvious; but, in order that it may not become a snare to persons who deal with the firm, it is generally provided by statute that the name of a special partner shall not appear in that of the firm. Partnerships of this peculiar kind can only be formed under

positive statutes; and all the provisions of the statute under which a limited partnership is formed must be accurately observed. Here, also, legal advice is desirable.

There is a certain thing connected with an established business, which is called "good-will." Although not perceptible to one's bodily senses, it has a commercial value. Lord Eldon once defined it as "the probability that the old customers will resort to the old place." This probability arises from their experience of fair treatment, and depends, in a considerable degree, on the maintenance of a fixed locality. It usually accompanies a business, when the business is sold or transferred; and it is chiefly important as enhancing the price at which the sale or transfer is estimated. There have been cases in which some secret of trade was connected with the "good-will;" but such secrets, if new and useful, are generally secured to their inventors, in this country, by the issuing of a patent.

The operations of commerce are now so enlarged, that "the old customers" constantly wish to get certain articles from the same manufacturers or dealers, though they do not of necessity go to "the old place" in the sense in which the phrase was used by Lord Eldon. They wish to procure goods of the same description and quality as those which they have previously had; and they look for some indication which will show that what they are now buying is similar to what they have been accustomed to buy. This indication is afforded by the use of trade-names and trade-marks.

Every one is at liberty to use his own name, and to print it, if he can, upon the goods which he produces, or to label them with it. A manufacturing firm can use its name in the

same manner. Hence, it naturally follows that if Mr. Meneely goes into the business of bell-founding, and makes good bells, so that people inquire for bells of his manufacture, another person of the same name is not thereby prevented from going into the same business, and calling the products of his industry "Meneely bells." If Messrs. Crosse and Blackwell make remarkably good pickles, which are much in demand as coming originally from their establishment, this will not hinder another Mr. Crosse and another Mr. Blackwell from going into partnership in the same business, and labeling their bottles with their firm name. Caution is necessary just at this point: the second Mr. Meneely, and the second Messrs. Crosse and Blackwell, will not be permitted to add such other marks or words as tend to deceive the public; and, if they do so, a court of equity will check them. This was well expressed by an eminent English judge: "When a person is selling his goods under his own name, and another not having that name is using it, it is clear that the latter person is using it in order to represent the goods sold by himself as those of another. But where two persons have the same name, it does not follow that, because the one sells goods under his own name, and it happens that the other has the same name, he is selling goods as the goods of the other."

So then, every man has the right to use his own name in his own business, though he may by so doing interfere with or damage the business of another person bearing the same name; but he has no right to use any artifice, by which the impression may be produced, that the establishments are identical. Many interesting cases have arisen under this head. A curious one, involving nearly the same principle, was that of Mr.

Cave, heard in England in 1868. He was a tradesman who had acquired a good reputation in a certain business. Another tradesman, engaged in the same line of trade, rented a corner store on the same street with Mr. Cave, and set up the sign "Cavendish House." This would have been all right; but the ingenious man directed the sign-painter to arrange the letters in such a way around the corner of the house that people on the one side should see only the first four of them. His belief evidently was that careless passers-by would go into his store under the impression that it was Mr. Cave's. The court saw through this artifice, and made him alter the sign.

So it is with the titles of newspapers and periodicals. The name of a new publication must not so closely resemble that of an old one, as to be likely to lead the public astray.

It was long ago perceived that a manufacturer could draw special attention to his goods, otherwise than by merely placing his name upon them; as, for example, by marking them with the figure of a crown, or a hammer, so that buyers might ask for the "crown brand" of this, or the "hammer brand" of that. Such a mark is called a trade-mark. A trade-mark may consist of letters, or words, or figures, or pictures, or any combination of the same. It has been said that it ought to act as a finger-board, guiding the public to the right spot. The letter Q in the middle of a castle, though meaningless in itself, will do this, when once people know to what it relates; and so will the word "Salamander," used in connection with the name of the particular article. No word, or combination of words or figures, is a good trade-mark in law, if it describes the thing sold by reference to its kind or quality, or to the town or county in which it is made; though, as to the latter

point, it may be safer to say that a manufacturer cannot appropriate the name of the place in which his factory is situated, so as to prevent other manufacturers, who also have factories in the same place, from using that name, even though they came to the place after he did. The principle of the matter is this: a manufacturer is at liberty to tell the public the truth concerning what he produces. Hence, if one man makes "indestructible linen picture books" for children, and advertises them as such, this will not prevent another man from using the same description for similar picture books published by him. There must be something arbitrary in the connection of the words with the thing. This is the case with "Lone Jack" cigarettes, and "Charter Oak" stoves, and "Plymouth Rock" baking powder. That is to say, taking the last instance, Plymouth Rock has properly nothing to do with baking powder; but, if a manufacturer of such powder were to use that name for it, and it came to be known thereby, the name would be a good trade-mark in law.

There are, however, a few words and symbols, arbitrary in themselves, which have come into frequent use, and cannot be privately appropriated. Such are the letters I X L, and the word "Excelsior," and those signs which are commonly employed as emblems of freemasonry. To be deprived of the exclusive use of any of these as a trade-mark is certainly no hardship. The man must indeed be devoid of all inventive faculty, who cannot devise some original combination. The more uncommon, picturesque and startling the combination is, the more likely it is to attract attention, and to secure custom, if only the goods offered are worth buying.

The judges have frequently said that a trade-mark which expresses an untruth will not be protected. The mark is to lead the public, and it must not mislead them. A useful example of this occurred in the State of New York, some years ago. A druggist made and sold a cosmetic, which he called The Balm of a Thousand Flowers. It was not really made from flowers, but from oil, ashes and alcohol. Another man commenced to manufacture a similar article, which he called The Balm of Ten Thousand Flowers. The former manufacturer sought to check this, on the ground that the name thus chosen was a close imitation of that already used by himself; but the court refused to protect him, because the name he used was the expression of a falsehood.

A person who uses a trade-mark already appropriated by some one else, is said to infringe on that other person's right, and his act in so doing is called an infringement. There may be an infringement, without a full and literal copying of the original name or mark. The question frequently occurs: What degree of similarity will constitute an infringement? The reply is, such a degree of similarity as tends to mislead an average purchaser. If an ordinary person, looking at the mark or name with ordinary attention, would probably be deceived, that is enough to induce a court of equity to grant relief, by restraining the further use of the mark or name. In the case of the cosmetic already mentioned, the similarity of name was doubtless sufficient to give the first druggist a good cause of complaint; but his application was denied, as we have seen, for a special reason. "It is not necessary," said an eminent English judge, "to show that there has been the use of a mark in all respects corresponding with that which

another person has acquired an exclusive right to use, if the resemblance is such as not only to show an intention to deceive, but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade-mark belongs."

Where there has been an infringement, the party injured can sue for damages already suffered, and also have the continuance of the injury prevented. In some States, there are laws concerning trade-marks, and in two or three States a provision is made for registering them. Congress passed an act on this subject in 1870, but it has been decided to be unconstitutional and void.

A remedy can be had for all fraudulent acts in connection with trade-marks and labels; such as the removing of the latter, and placing them on packages of inferior goods, or the wrongful printing and selling of labels. It is usually more difficult, in such cases, to prove the fact, than to gain the assistance of the court after the fact is proved.

CHAPTER XIV.

CONCERNING CORPORATIONS.

Corporations play an exceedingly important part in the commerce of the world. Many enterprises, requiring immense capital, and reaching over a wide area, are altogether too extensive to be carried on by ordinary partnerships; and many other enterprises, which are within the range of an ordinary partnership, can be more conveniently carried on in a different way. A corporation is a body of individuals authorized by law to act as though they constituted one person. The great Chief Justice Marshall expressed this notion very clearly, in saying that the main object of an incorporation, that is, of the act by which persons become a corporation, is "to bestow the character and properties of individuality on a collective and changing body of men." A corporation is said to be "an artificial person." It can hold property, and buy, and sell, and enter into agreements, within the scope of the purposes for which it was created; and it can go into court by means of its attorney, and bring an action, or defend when an action is brought against it, just as any natural person can do. It makes no difference, as to any of these points, whether the members of the corporation remain the same, or whether some go out and others come in from time to time. The corporation continues, although the membership may change.

Some corporations are "public" or "municipal," and with them we are not now concerned. A public or municipal corporation is a part of the State itself, like a town or a county, which has been incorporated by the legislature, in order that it may the more conveniently manage its affairs, and carry on a subordinate local government. The rules which it enacts are commonly called municipal ordinances.

Corporations formed for commercial purposes are called "private corporations aggregate." They are private, as not being public or municipal, and aggregate, as consisting of more than a single individual. To this class belong the great railroad companies, and canal companies, and insurance companies, and many companies which are organized for manufacturing goods, and banking, and dealing in real estate. The objects of private corporations are very numerous. The first thing to be done by persons who wish to form a private corporation is to procure a charter. By a charter is meant a document, issuing from the government, which authorizes the corporation to spring into being, and defines its powers. It was at one time necessary for every corporation actually to possess a document of this kind, prepared with great formality, and sealed with the seal of the sovereign power. The preparation of a separate charter for each corporation was found to be troublesome and expensive; and so, in many States of this Union, general laws have been passed, under which persons who wish to be incorporated prepare their own articles of incorporation, under specified rules, and file copies of them with certain public officials, and are thereupon recognized as a corporation. Great care must be taken, in all such cases, to observe and follow the provisions of the statute.

When the articles are duly filed, they answer all the purposes of a charter conferred in the older and more ceremonious manner.

We have seen that, in case of a partnership, the partners may contribute in different ways. One, for instance, may supply the capital, while another agrees to do the work. All who enter into a business corporation must contribute money; and the way of it is this: a certain sum is fixed upon as the capital, and that sum is divided into a number of equal parts, which are called shares; and the corporators subscribe for as many shares of the capital stock as they choose. Usually, they do not at once pay up the full amount of their shares, but only a stated portion, undertaking to pay the remainder in the future, or when it may be needed. The paid-up capital, of course, is not allowed to lie idle, except as much as is needed for current expenses. It is turned into various shapes, according to the character of the business in which the corporation is engaged. So then, the "capital stock" of a corporation consists of the paid-up capital, or that into which it has been converted, and of the capital not yet paid up, but due from the subscribers. If the corporation makes good profits, it may and ought to accumulate a surplus fund also.

Here are a few statements made by the Supreme Court of the United States, with reference to capital stock. Although uttered by men of profound legal knowledge, they are adapted to the comprehension of all who read them carefully; for it is not a mark of the highest wisdom to be unintelligible. The capital stock of an incorporated company is a fund set apart for the payment of its debts. It is a substitute for the per-

sonal liability which subsists in private copartnerships. When debts are incurred, a contract arises with the creditors, that it shall not be withdrawn, or applied otherwise than upon their demands, until such demands are satisfied. It is publicly pledged to those who deal with the corporation, for their security. Unpaid stock is as much a part of this pledge, and as much a part of the assets of the company, as the cash which has been paid in upon it. Creditors have the same right to look to it as to anything else, and the same right to insist upon its payment as upon the payment of any other debt due to the company. A resolution that no further call shall be made is void as to creditors. An agreement that a stockholder may pay in any other medium than money is also void as a fraud upon the other stockholders, and upon creditors as well. The capital stock is a trust fund, of which the directors are the trustees. It is a trust to be managed for the benefit of the stockholders during the life of the corporation, and for the benefit of its creditors in the event of its dissolution. This duty is a sacred one, and cannot be disregarded. Its violation will not be undertaken by any just minded man, and will not be permitted by the courts. The idea that the capital of a corporation is a football to be thrown into the market for the purposes of speculation, that its value may be elevated or depressed to advance the interests of its managers, is a modern and wicked invention.

Sentences like these, animated with the spirit of essential honesty and justice, may well be disentombed from volumes of reports, and commended to commercial men throughout the country.

The directors of a corporation are the persons chosen to

manage its affairs, and to superintend its ordinary business. They are usually elected from time to time by the stockholders from among their own number. Their duty is to carry on the business of the corporation in furtherance of those purposes for which it was created, and not to divert its operations into some other channel. It is generally necessary for them to employ clerks and other subordinate officers, to attend to matters of detail. But this circumstance does not discharge them from the responsibility of faithful oversight; on the contrary, it emphasizes that responsibility. They are not, however, personally liable to the stockholders for losses arising from mere errors of judgment, but only for losses caused by their fraud or gross negligence. If they are honest and diligent, but incompetent, the remedy lies with the stockholders, who can remove them, in such manner as may be provided in their constitution or by-laws, and appoint competent men in their places.

A corporation usually has a president, a treasurer, and a secretary. The president or manager is the chief executive officer, and has power to conduct the business, and to bind the corporation in ordinary matters of contract. The treasurer is the custodian of the funds, and is responsible for the safe-keeping of them. The secretary has charge of the books, and is said to be the servant of the directors. These duties, assigned to several persons in large companies, may be combined in one person, if this be more convenient. The president and the treasurer and the secretary are responsible to the stockholders for the faithful performance of their respective duties, and are subject to the periodical supervision of the board of directors.

The rules adopted by a corporation for the management of its affairs are called by-laws; and the power to make suitable by-laws rests primarily in the stockholders. It is frequently convenient, however, that this power should be exercised by the directors, or by some other select body of officers appointed thereto in the articles of incorporation. By-laws must be reasonable in themselves, and consistent with the general laws of the country, and the particular purposes and powers of the corporation. Many interesting questions have arisen as to the validity of by-laws. A single instance must suffice here: a number of merchants formed a corporation which was called a "Merchant's Exchange;" and a by-law was made, requiring all members to submit such controversies as might arise between them to arbitration. This occurred in the State of Missouri. Now, a provision of that kind tends to abridge the right which a citizen has to claim the protection of the courts of justice, in all matters affecting his legal rights. Persons may very properly agree to submit *existing* disputes to arbitration; but an agreement between Atkins and Dawkins, to submit all their *future* disputes to the decision of Wilkins, will not be sustained. This by-law closely resembled such an agreement, and the court pronounced it unreasonable and void.

A corporation may not go beyond the limits of its powers: it may not engage in transactions which fall outside the scope of those purposes for which it was created. This principle is well illustrated in the case of a religious society which had become incorporated, and which bargained with the owner of a steamboat to charter it for an excursion. The society was organized and incorporated for religious purposes; and a social picnic, however pleasant and profitable, could scarcely

be regarded as a devotional proceeding. The consequence was that the bargain was void, and could not be enforced. The owner of the steamboat ought to have said, "I cannot bargain with you as a society; but I will lease the boat for the day to any responsible person whom you may name." To put the matter generally, every one who enters into a contract with a corporation does it at his own risk in this respect: if the transaction is foreign to the objects of the corporation, his claim arising from it may be surrounded with embarrassments, so as to be practically worthless; while a contract regularly made with a corporation, within its proper business, can be enforced against it without any qualification. This is all that can safely be said in a treatise like the present. The doctrine in question abounds in distinctions and difficulties, which cannot be appreciated by those who are unlearned in the law.

While the ordinary business of a corporation is conducted by its appointed officers, corporate meetings are held from time to time for certain purposes. Provision is usually made in the articles of incorporation, or in the by-laws, for the holding of regular meetings at fixed times and places; and emergencies sometimes occur, rendering it necessary to call special meetings. When there is no provision to the contrary, every member has a right to be present and to vote at each meeting; and it follows that every member must be notified as to when and where meetings are to be held. All stockholders, however, are supposed to know what days are fixed in the ordinary manner for regular meetings; so that notice of such meetings, though frequently given, is not absolutely necessary. Notice must be given to every stockholder with reference to

any special meeting; and if any matter, which is important and unusual in its character, is to be discussed at a regular meeting, then notice of that matter must be given. The lack of proper notice may cause serious trouble, and may in some cases even render the proceedings of the meeting null and void.

The general principle, with regard to voting, is that of government by the majority; but it is always provided that a certain number of members must be present at the meeting, to secure a binding vote. That certain number of members is called a *quorum*. If forty persons were to form a corporation, each taking one share and no more, and if the articles stated that twenty-five should constitute a *quorum*, and if twenty-five met at a meeting duly called together, the vote of thirteen would be decisive. The fifteen absent members would be considered as agreeing with the thirteen who made up the majority of the *quorum*.

It would not be fair to give a member possessing one share an equal power of voting with another who has fifty shares. The general rule is that the voting power shall be proportioned to the amount of stock actually held. By this means, corporations are sometimes led into danger. Wealthy and unscrupulous men manage to force down the market price of stock, buy it up at a low figure, secure the greater part of it in their own hands, and thus out-vote the smaller stockholders, even though the latter combine against them. The history of Wall Street furnishes many examples of this mischief, which is exceedingly difficult to remedy.

Individual liability, it has been said, is repugnant to the law of corporations. That is to say, unless there is some posi-

tive law or special provision increasing the liability of stockholders, they cannot be called upon to do more than to pay up the full amount of their shares, whatever may be the difficulties in which the corporation may be involved. The stockholder's liability is therefore usually limited, and differs from that of a partner in a firm, which is usually unlimited. In ordinary cases, the creditor of a corporation can look to the capital stock, paid and unpaid, and to the property of the corporation, including debts due to it, and to the surplus fund, if there be one; but he cannot look beyond this, to the private resources of the corporators. It is highly expedient that this state of things should exist; for persons are thereby enabled to invest in various kinds of stock, without running the risk of losing all that they possess.

Large corporations frequently raise money by executing bonds, to which coupons are attached. The character of a coupon-bond has been explained in Chapter IX. The bondholder is a creditor, who lends so much money to the corporation, making an investment for the purpose of periodical interest at a fixed rate; or he is a purchaser of the bond on speculation, not regarding the question of interest so much as the probability of selling the bond again at an advanced price. In either case, the corporation itself is his debtor. His position is therefore entirely different from that of a stockholder, who is, as it were, a limited partner in the concern, and who is entitled to a share of the profits, if there be any. As there ought to be no division of profits until existing debts are paid, it follows that the just claim of a bond-holder is superior to that of a stockholder. A dividend may be distributed among stockholders, notwithstanding the existence

of outstanding bonds; but no dividend must be distributed if the interest on the bonds is in arrears. It has become too common for corporations to depend on the issuing of bonds, rather than on the payment of capital stock, for the funds with which to do business. Such bonds carry with them no voting power, and afford a ready instrument of financial gambling, by means of which many have been ruined.

A corporation may be dissolved in several ways: by the expiration of the period for which it was created; by the surrender of its charter; by legal proceedings under which the charter is declared to be forfeited; or by the act of the legislature. In other words, if a corporation is chartered for ten years, and the ten years expire without any renewal of the charter, the corporation dies; if the members agree to dissolve, they can do so by taking certain steps to that end; if the corporation abuses its powers, or declines to use them, it can be dispatched by process of law; and the legislature may, in some exceptional cases, revoke the charter; but not in such a manner as to impair contract-rights already acquired.

When a corporation becomes financially embarrassed, the usual method of extricating it from its difficulties is to apply to a court of equity for the appointment of a receiver. The receiver undertakes the management of the concern until its affairs can be turned over into new hands, or until some other satisfactory adjustment can be made. Most of the railroad companies in the United States have been, at one time or another, in the hands of receivers. It has sometimes happened that a corporation has done better, under an honest and capable receiver, than under its own direction.

CHAPTER XV.

CONCERNING CONVEYANCES.

By a conveyance is meant a document which transfers the title to property from one person to another. The term is usually employed with reference to real estate. For the sake of convenience, this chapter will deal with conveyances of land, mortgages of land, bills of sale, and chattel mortgages.

It has long been necessary for a person who conveys land to another to do so by executing a writing under seal, which is called a deed. A deed commonly begins with a set form of words; such as, "This Indenture Witnesseth;" or "Be it known unto all men by these presents." Then should follow the time and place, the name of the party who executes the deed, a recital of the consideration or purchase-money, the words of conveyance, the description of the land, a reference to the manner in which the grantor himself obtained title, a statement of covenants, warranties, or conditions, if any, the signature and seal of the grantor, and the signatures of witnesses. The person executing the deed is commonly called the grantor. The usual words of transfer or conveyance are "Give, Grant, Bargain, Sell and Convey," and a long history attaches to them; but the simple word "Convey" is enough. Let us suppose that Adam Bell wishes to transfer lot 8, in block 75, of a certain city, to David Gray; that they both live there, and that the agreed price is $900. The following deed would be a good one:—

THIS INDENTURE, made the——day of——, 1893, between Adam Bell and David Gray, both of the city of——, county of——, State of——,

WITNESSETH: That in consideration of the sum of Nine Hundred Dollars ($900) paid to the said Adam Bell by the said David Gray, receipt of which is hereby acknowledged, the said Adam Bell doth GIVE, GRANT, BARGAIN, SELL AND CONVEY unto the said David Gray, that piece of land known as Lot Eight (8) Block Seventy-Five (75), in said city. To Have and to Hold the same to the said David Gray and his heirs forever; being a part of the land which Simon Young conveyed to the said Adam Bell by deed recorded in Deed Book No.——, of said county, on page——, as by reference thereto had will more fully appear. In witness whereof, the said Adam Bell hath hereto signed his name and affixed his seal, on the day and at the place aforesaid.

ADAM BELL. [SEAL]

Executed in the presence of

MATTHEW STILES,
EDMUND STOKES, } WITNESSES.

Two things combine to render this particular deed very short: the description of the land occupies only about a line, and there is no clause of warranty. In most deeds, the description is much longer; and it is generally necessary to mention the "metes and bounds:" that is to say, the lines which form the boundaries, with the points or angles at which they turn, adding references to adjoining property in order to make the description clearer; as, for instance, "all that property described and bounded as follows, to wit: beginning at the North-east corner of Third street and Market street in the said city of—, and running thence eastward two hundred feet along Third street, thence north one hundred feet along the line of property of Samuel Clay," and so on. If the distance and quantities named do not quite correspond to the boundary-points, the latter will generally be treated as more correct;

for instance, in the example just given, it might happen that Samuel Clay's property began one hundred and ninety-eight feet from the corner of the streets ; but the evident intention of the grantor was to convey all that he had along Third street, as far as the boundary line.

In discussing warranties, it should first be noticed that deeds of conveyance are practically divided into two classes, namely: quit-claim deeds, and warranty deeds. A quit-claim deed merely releases and gives up such title as the grantor may have in the land ; and it does not of itself necessarily imply that he has any such title. A warranty deed implies that the grantor has a title, and that he will protect the purchaser in a greater or less degree, according to the nature of the warranty clause. The ordinary covenant of warranty says, in effect, that the grantor will warrant and defend the title to the purchaser, and to all who derive title subsequently from him, against the lawful claims of all persons claiming under the grantor; or, in other words, that the grantor has not conveyed the title, and will not convey it, to any one else. This is frequently extended so as to defend the title to the purchaser against the lawful claims of all persons whatsoever ; and in this form it is called a general warranty. If the warranty is broken, that is, if the title does not answer to it, and the purchaser has to give up the land to some one who has a superior title, he can recover upon his warranty, and his grantor must pay back the purchase money, with interest. This, at least, is the general rule.

Another common covenant is to the effect that the property is free from incumbrances. This means, in general, that there

is no mortgage, mechanic's lien, or unpaid tax, or other charge upon it. If there should, in fact, be any such charge, the covenant ought to state that the property is free from incumbrances, with that exception. Certain other disadvantages, which need not be mentioned here, because they are unusual, are also called incumbrances.

It is not *necessary* to refer in the deed to the origin of the grantor's title. Adam Bell could convey to David Gray without saying that his own grantor was Simon Young; but it is very desirable to give such a reference, because it assists in the searching of the title.

If Adam Bell happened to be a married man, his wife ought to unite with him in executing the deed. The reason is this: a married woman, if she becomes a widow, is entitled to enjoy, during the rest of her life, the use of one-third of the land which her husband owned during the marriage. This right on her part is called her dower. This is an ancient right, and was strongly recognized by the old common law of England; and, although English statutes have very nearly destroyed it, the right of dower has survived in most States of the Union. The consequence is that, if Mrs. Adam Bell did not join in the deed, the purchaser would take the land subject to the chance of her claim for life as to a part of it, in case her husband should die before her; and no number of successive transfers would deprive her of this right. It is therefore necessary, in searching a title, to be sure that previous grantors were unmarried when they executed their deeds, or that their wives joined them in the execution of the same. The husband also has an interest in the wife's land, which is called his curtesy. It is even more necessary that he should join in her

deed, than that she should join in his; because, as a general rule, the deed of a married woman, executed by herself alone, is entirely void. Children, however, have no such interest in the land of their parents as to prevent their parents from dealing with it as they choose.

A deed must be signed, sealed, and delivered. In this country, a scroll or flourish is usually added instead of a seal. By the delivery of a deed is meant some word or act by which the grantor signifies his wish that it shall go into effect. If he merely signs and seals it, and then, without showing it to any one, locks it up in his safe, the deed is imperfect for want of delivery, and will convey no title.

Besides this, it is necessary that a deed be witnessed and acknowledged. In most of our States, two witnesses are necessary; and even where the law only requires one, it may be convenient to have two. So the name of Matthew Stiles and Edmund Stokes have been added to the deed from Adam Bell to David Gray. Every maker of a deed must acknowledge it before some officer appointed by the government to take acknowledgments. This officer is usually a justice of the peace, a notary public, or a commissioner of deeds; and he may be one of the witnesses. The act of acknowledgment is a solemn statement that the party has executed the deed for the purposes therein mentioned, and desires it to be recorded. When this statement is made, the notary or other officer adds his certificate. If one of the parties is a married woman, she is to be questioned apart from her husband, and to state that she has executed the deed freely, without any compulsion. In

some States, under recent statutes, this examination need not be made separately; but the acknowledgment of husband and wife is generally necessary.

One more thing remains, and that is to have the document recorded. In every county in every State in the Union, there is a public office for the recording of deeds and mortgages. This office is usually in the county court house. The object of the recording system is to enable purchasers to trace titles correctly. A purchaser who is acting in good faith can rely on what he finds in the books of record. At the same time, the work of searching titles, even with this help, requires peculiar experience, and persons unaccustomed to it cannot safely undertake it.

It is the purchaser's business to take the deed to the office for record, and to pay the necessary fee. When the instrument has been duly copied in the book, it is returned to him with a memorandum of the fact that it has been recorded.

A mortgage is a conveyance of land for the purpose of securing a debt. The indebtedness is usually expressed in a bond or a promissory note. The person making the mortgage is called the mortgagor, and the creditor who takes it is called the mortgagee. If the mortgagor fails to pay his debt when it falls due, the mortgagee can foreclose. Foreclosure is a proceeding by which the land is publicly sold at auction by the sheriff, and the proceeds are applied in payment. It is frequently necessary for the mortgagee to buy the property in at the foreclosure sale, so as to protect himself from loss; and he should see that it is not needlessly sacrificed. If the amount bid is not equal to the indebtedness, the mortgagee can recover the deficiency in an action on the bond or note,

if any, in connection with which the mortgage was given. A certain period is allowed, within which the debtor may redeem or buy back the property, by paying the purchase money and interest; and this privilege of redemption also belongs to other persons whose rights are involved in the transaction, and who are therefore protected by statute. The whole procedure of foreclosure and redemption is regulated in each State by local laws. In some States, a document called a deed of trust is used instead of a mortgage; but the substance of the matter is much the same everywhere.

A chattel mortgage is a conveyance of something other than land, for the purpose of securing a debt. The word *chattel* signifies any kind of property, except real estate. In most of the American States, chattel mortgages are lawful, and statutes exist with reference to them. It is customary for the mortgagor to retain possession of the thing mortgaged, in which respect a chattel mortgage differs from a pledge. The effect of this naturally is to give the mortgagor a fictitious credit, inasmuch as he appears to be the undisputed owner of a thing which is in reality encumbered with a debt. To remedy this difficulty, it is usually provided that chattel mortgages shall be filed or registered in the county where the transaction takes place. By this means, an opportunity is afforded to the public of knowing whether such encumbrances have been created; and, while an unregistered chattel mortgage will be good as between the debtor and his creditor who took the mortgage, it is not good as against other creditors, who did not know of its existence. That is to say, they can prove their claims, and get judgment, and levy on the property, just as if it had never been mortgaged.

A merchant occasionally mortgages his stock of goods to a creditor. This transaction is obviously not intended to interfere with daily sales to customers, whereby part of the goods may be turned into cash. It is therefore desirable that the creditor who takes the mortgage should stipulate for periodical payments out of the cash received, so that, as the security diminishes, the debt may diminish also. The document is sometimes so drawn up as to cover goods procured from time to time, to replace what has been sold.

The system of chattel mortgages affords various opportunities of fraud, and occasionally gives rise to troublesome questions. Many transactions of this description are good as between the parties immediately concerned, though not so as to outside creditors. The person giving and the person taking the mortgage should act in perfect good faith, and carefully observe and follow the local law. Experience has shown that there is danger in dealing with chattel mortgages, and it is a safe rule to let them alone.

A bill of sale is a document, usually under seal, whereby one person transfers his interest in personal property to another. By personal property is meant all property except real estate; so that "chattels" and "personal property" are the same thing. The bill of sale ought to be a memorandum of an actual, *bona fide* transaction, wherein there was a seller and a buyer, and a price paid; but it is frequently employed as a device to conceal the ownership of goods, and to hinder the collection of just debts. It will easily be perceived that this document is different from a chattel mortgage, which is merely a method of securing the creditor of the mortgagor, and does not operate as a sale. A bill of sale is occasionally drawn

up, when the transaction is not really a sale, but only a mortgage. When this is the case, the law will regard the substance of the thing rather than the form, and the document, which is in effect a chattel mortgage, ought to be registered as such.

In other words, the law, as we have seen, usually provides for the registration of chattel mortgages, and does not provide for the registration of bills of sale. These documents are different in their character, and ought to be correctly used, so as to describe the true nature of the transaction. If a bill of sale be drawn up for the purpose of securing the payment of a loan, or some other indebtedness, it amounts substantially to a chattel mortgage, notwithstanding its form, and therefore should be registered. If it is not registered, other creditors can deal with the property, as if the document in question had never been written.

CHAPTER XVI.

ON MISCELLANEOUS TOPICS.

Account Stated. When parties settle up their accounts, and strike a balance by mutual consent, the settlement is called an *account stated.* The person against whom such balance appears admits thereby that he is indebted to the other, and promises to pay the ascertained amount. He cannot avoid the effect of this implied promise, except by proving mistake or fraud ; and, if he wishes to rely on either of these defenses, he ought to demand a re-statement of the account as soon as the mistake or the fraud is brought to his notice.

Agency. The notion underlying an agency is, that one person acts in the name of another, and on his behalf. He on whose behalf the agent acts is called the principal. A clerk in a store is the agent of the storekeeper for the purpose of selling his goods. An engineer is the agent of the railroad company for the purpose of running a train. A bricklayer, employed by a contractor, is the agent of the contractor for the purpose involved in his work. The principal may appoint an agent by express authority, as by giving him written instructions, or by telling him what to do. Even less than this may be sufficient ; as, where the principal, without formally appointing the agent, sees him acting in his name, and makes no objection. In some cases, the agent acts entirely without

the knowledge of the principal, and the principal, on learning what he has done, ratifies the act. An example illustrating this point has been given on page 38, in connection with stoppage *in transitu*.

The effect of a subsequent ratification is precisely equivalent to that of a previous command or request.

The act of an agent is, in law, the act of his principal, if done by the express authority of the latter, or in pursuance of the object for which the agency exists. (See example on page 12.) If such act should result in injury to some third person, the principal would be responsible for it. If a bricklayer, employed by a builder to construct a chimney, carelessly drops a hod-full of bricks on the head of a passer by, the person thus hurt has a right to sue the builder for damages. If the employee of a railroad, whose duty it is to turn a switch, turns it the wrong way, and a collision occurs, those who are injured can claim compensation from the railroad company. No one is allowed to excuse himself from the consequences of an injury occasioned by his agent or servant, by saying that the injury did not proceed from his own hand. Agency implies responsibility. It is therefore important to select careful and prudent servants and employees. If, however, the agent or servant goes entirely out of the line of his employment, and commits an injury on his own private account, he alone is answerable for it.

Arbitration and Award. In case of a dispute or difficulty, the contending parties will sometimes agree to refer the matter to arbitration. They choose one or more persons, usually an odd number, to hear and decide; and the decision

thus obtained is styled an award. It is the duty of arbitrators to decide only such points as are submitted to them, to hear evidence on both sides of the case, and to act with entire fairness, casting every prejudice aside. The arbitrators must act together. It is not permissible for two arbitrators out of three to hear the controversy, and for the third to assent to the decision at which they have arrived. The parties are entitled to the benefit of the joint deliberations of all. If the arbitrators think they have heard enough, and shut out further testimony which would have thrown light on the matter, the award is not binding. If the award goes beyond the submission, that is, if the arbitrators decide matters which they are not called to decide, it is certainly void as to the excess, and is likely to be void altogether. Both an agreement to submit a controversy to arbitration, and the award of the arbitrators, ought to be in writing ; and it is proper to add seals, and the names of witnesses. An arbitration made by order of a court of justice is usually called a reference, and the arbitrators so appointed are called referees.

Bailment. A bailment is a transaction whereby one party, called the *bailor*, transfers a piece of movable property to another party, called the *bailee*, on the understanding that the thing so transferred shall be re-delivered by the bailee in course of time, either to the bailee himself, or to some one indicated by him. Examples of bailments are the loan of a book, the leaving of a watch with a watchmaker to be repaired, the sending of a parcel from Baltimore to St. Louis by express. If your friend lends you twenty dollars, the loan is not a bailment, because he does not expect to get back the very money which he lends, but its equivalent in coin or currency. If,

however, I lend you a rare piece of money which is specifically to be returned, the case is different. In all ordinary cases of bailment, the bailee is bound to use reasonable care in preserving the thing in question from injury; but, where the whole benefit of the transaction goes to the bailee, he is chargeable with a higher degree of care than that which would be required of him, if the bailor had the whole benefit. For example, one who borrows a set of books, for his own reading, is legally bound to take better care of them than he would be, if he merely kept them in his house for the convenience of their owner.

A familiar example of a bailment is afforded by the case of baggage at a hotel. The guest's trunks are in charge of the landlord, and the landlord is to a large extent responsible for their safety. On the other hand, he has a lien on the guest's baggage for the amount of his charges. This lien has been allowed to *inn-keepers* for hundreds of years, because of their obligation to entertain travelers generally. But the keepers of boarding-houses, unless assisted by statutes, have not a similar right; nor are they responsible for a boarder's baggage to the same extent as a hotel-keeper is for that of his guest. Laws have been passed in most States of the Union, giving boarding-house keepers a lien, so that they may refuse to give up the boarder's trunks until his bill is paid. There is a difference, however, between a *boarding-house* and a mere *lodging-house*. The keeper of a house of the latter description has no right to detain baggage, unless expressly included in the local statute; and the statutes, as a rule, mention boarding-houses, but not lodging-houses.

Brokers and Commission Merchants. A broker is a

person whose business it is to negotiate bargains between buyers and sellers, without handling the goods which are thus bought and sold. A factor or commission merchant is one who receives merchandise or produce from his customers, takes it into his charge, and sells it on their account. A broker usually has an office only, while a commission merchant has a warehouse, which is frequently adjacent to a wharf. The broker, as a rule, confines his attention to some particular article, such as wheat, or cotton, or tea, or sugar, or indigo; and he keeps samples of the article in which he deals, exhibiting its different grades or qualities. The commission merchant generally disposes of all the miscellaneous produce which the farmer or planter raises, and does not sell by sample. It follows from these remarks that the broker is an agent for both buyer and seller, while the commission merchant is an agent for the seller only, whose goods he handles.

When a broker has made a bargain of the kind already described, he should enter it in his journal, and sign the entry. He should also make out separate memoranda, and deliver the same to the buyer and to the seller. These memoranda are called *bought* and *sold notes*, and may be in the following form:

BOUGHT NOTE.

ROBERT SIMPSON, TEA BROKER.

117 State Street,

BOSTON, MASS., July 20, 1894.

Messrs. Bradbury and Morley:

Bought this day for your account, of Mr. A. B. French, Fifty Chests Pekoe Tea, ex steamer "Carnatic," at $____ per 100 pounds.

ROBERT SIMPSON.

SOLD NOTE.

ROBERT SIMPSON, TEA BROKER.

117 State Street,

BOSTON, MASS., July 20, 1894.

Mr. A. B. French:

Sold this day on your account, to Messrs. Bradbury and Morley, of this city, Fifty Chests Pekoe Tea, ex steamer "Carnatic," at $_____ per 100 pounds.

ROBERT SIMPSON.

These bought and sold notes ought to be made out as soon as possible after the bargain is consummated, and they should be delivered to the parties without delay.

A commission merchant, of course, keeps an account with his customer, and he may render statements to him in the form of *sold notes*, if he chooses; but it is no part of his business to execute a *bought note*, because he is not the buyer's agent.

A broker has usually no authority to receive from the buyer the price of the commodity sold; while a commission merchant is always expected to receive payment. If a broker negotiates a sale to some one who is unable to pay, he of course earns no commission. If a commission merchant, being authorized to sell for cash, sells on credit, he does so at his own risk. If he be authorized to sell on credit, he must use ordinary care, and avoid buyers who are not likely to pay. Having acted with prudence in this matter, he is not responsible further, unless he has undertaken what is called a *del credere* commission, in pursuance of which he guarantees the payment of the account. The question, whether a commission merchant should sell strictly for cash, or allow a moderate credit, will depend largely on the custom of the trade.

Commission merchants frequently make advances to their customers; and they have a lien on the goods consigned to them, for money so advanced, and for all expenses properly incurred on a customer's account. When the goods are sold, this lien is converted into a right to deduct the amount owing by the customer from the cash received.

Compromises. When parties agree to settle a dispute between themselves, without either going to law or requesting the assistance of arbitrators, such a settlement is greatly approved by the law. Even if it should turn out, on further examination, that the right was entirely on one side, still, if there were an honest difference of opinion, and an honest effort to close the matter, and a payment of money as the result, the settlement will rarely be disturbed. It is what the law calls an "accord and satisfaction." The accord is the agreement to compromise the claim, and the satisfaction is the actual settlement of it. If, however, the matter in dispute arises out of the criminal wrong-doing of one of the parties, it is necessary to be exceedingly cautious. In many of the States, a misdemeanor may be compounded, but not a felony. By a misdemeanor is meant a criminal offense of an inferior kind; such as beating a man with a stick, or slandering him, or stealing a small sum of money from a cash box. A felony is a graver crime, and is usually punished by imprisonment in the penitentiary. The composition, or act of compounding, is the receiving of an indemnity or compensation for the injury which has been done; as, when a person has taken five dollars, which belonged to another, and the owner of the money, on discovering the theft, demands and receives repayment, and does not prosecute the offender. It is highly im-

portant that the injured person should not make a profit out of the transaction. In the case just supposed, if the owner of the money were to take ten dollars from the thief, on the understanding that he would not prosecute him, he would be acting unlawfully, and he might get into trouble thereby. In some States, no criminal offense, whether great or small, can be lawfully compounded.

Discounting. The ordinary operation of discounting a bill or a note consists of taking it in exchange for money, at a deduction from its face value. The amount of the deduction will depend partly upon the current rate of interest, and partly upon the commercial standing of the persons whose names appear on the paper, and whose promises to pay are expressed therein, as previously explained. Some negotiable instruments cannot be discounted in the market at any price, because no one has sufficient confidence in the solvency of the persons who have promised to pay.

For the purpose of illustrating the operation of discounting a note, let us suppose that you wish to borrow a thousand dollars for one year from the First National Bank of your city, the highest legal rate of interest being ten per cent. Thereupon, you execute your note, in favor of the bank, not for the sum of one thousand dollars with ten per cent. interest from date, but simply for one thousand dollars, payable a year hence. The bank, if satisfied with the security which you offer, will calculate the year's interest, which will amount to a hundred dollars, and will at once deduct it from the thousand dollars, handing you only nine hundred dollars. In so doing, it discounts your note. On considering this transaction, you will preceive that the bank really receives a hun-

dred dollars at the end of the year, upon a loan of nine hundred dollars, making about eleven per cent. per annum. Long custom has given sanction to this practice, and it is not considered usurious. "But," you will say, I do not by this means get the full thousand dollars, which I wish to borrow." The answer is this: if you need the full amount, you will have to execute your note for the sum of eleven hundred dollars. You will see by calculation that the bank, in discounting your note, would hand you the required amount, all but ten dollars.

Where the rate of interest is six per cent., the bank will hand the borrower $940 in exchange for his note for $1000 at one year, and his position will be so much better by reason of the lower rate of interest.

Letter of Credit. A letter of credit is a document whereby one person requests another to advance money to a third, or to give him credit, up to a certain amount. When it is addressed to a particular individual, or to a particular bank, it is called a special letter of credit. Frequently, however, it is addressed to all persons generally; and in that case it is called a general letter of credit. An example occurs when an American is about to visit Europe, and to travel from one country to another. Instead of taking a large sum of money with him, he can go to his banker and buy from him a letter of credit addressed to several bankers in London, Paris, Vienna, and other cities. These bankers, by an arrangement made with the banker here, will honor his letter of credit; and by this means the traveler can obtain, in different foreign cities, as much money as he needs, from time to time. In such a case as this, the letter of credit frequently assumes the

form of a circular note, and is known by that name. "Circular notes," says a writer on this topic, "are generally, but not always, for specific sums, and are in fact letters of credit which a banking house gives to a traveler, and which are made available, on presentation to any one of the agents or correspondents of the house, in a long list of places, the names, both of the places and the agents in them, being usually stated in the instrument itself. These instruments are usually transferable by endorsement, and are perhaps more like bills of exchange than ordinary letters of credit, but are not the same, nor would they be in all respects governed by the law of negotiable paper."

Power of Attorney. A power of attorney is a document whereby one person authorizes another person to transact business, or to do some specified act, in the writer's name, and on his account. When it is drawn up in a formal manner, it usually bears a seal and the names of witnesses, just like a deed of conveyance; but these incidents are not necessary to it.

Powers of attorney are always strictly construed. This means, that the authority conveyed will not be any more extensive than the language which is used requires. At the same time, where authority is clearly given, it includes the power to do such things as are necessary to its proper execution. These propositions may be illustrated by examples. A power to sell and convey land in the name of the owner does not authorize the agent or attorney to convey it away for nothing. A power authorizing an agent to do certain specified acts, and also "to transact all business" on behalf of the principal, does not warrant the agent in transacting any of

the principal's business except that which relates to the acts specified. A power to superintend and manage property does not enable the agent to sell and convey it away, but it does enable him to employ such workmen, and to purchase such materials, as may be necessary in the superintendence and management thereof. Hence, it is very desirable that a power of attorney, when it relates to an important subject, should be drawn up with extreme care; and it will generally be the truest economy to consult a good lawyer about the matter. The words should be clear and precise. They should not be general, vague, and doubtful. A power authorizing an agent to dispose of real estate for the principal must always be executed under seal, and duly witnessed. Without these formalities, it does not confer sufficient authority to perform the act.

CONCLUDING REMARKS.

It is more than likely that some readers will blame this book for containing too much, while others will charge it with the fault of containing too little. Those of the former opinion will find, on further examination, that no topic has been discussed which may not probably and easily come within the notice of a man of business. Those who incline to the latter opinion are reminded that a line must be drawn between that moderate knowledge which will benefit a merchant or a farmer and that greater measure of learning which a lawyer ought to possess.

The writer wishes to add a word of advice to those students in business colleges who have read thus far. You will shortly be scattered abroad in various parts of the country; and many of you will live and transact business in or near county seats. It is therefore to be expected that you will have to attend court sooner or later. You may not be personally engaged in lawsuits; but you will be summoned to serve on juries, or to attend as witnesses. When this takes place, your opportunity for selecting a lawyer for yourself has arrived. It will not be difficult for you to see who prepares a case with care, and argues it with ability; to discover who has the confidence of the court, and who has not; who conducts his clients' affairs honestly and diligently, and who seeks to cover up his ignorance with trickery and claptrap. And when you have a legal adviser whom you can trust, go to him in any important and doubtful case, and do not rely too much on your own judgment.

Questions on Chapter I.

1. What is the first principle of a binding agreement?
2. Give an example of this.
3. What is meant by "a promise without any consideration?"
4. Give an example; also, of a promise with a consideration.
5. Need the values be equal, to make the agreement binding?
6. How does the law regard minors? Who is a minor?
7. If a young man of 19 is keeping a store, and wants to buy goods on credit, how can the seller deal with him safely?
8. How about contracts with married women?
9. What if their husbands have deserted them?
10. Does a contract made by a clerk or agent bind his employer?
11. What if a salesman, contrary to instructions, sells a piece of goods under its regular price?
12. Name two cases in which the law requires a writing.
13. Name two other cases of the same kind.
14. Give an example relating to the sale of goods.
15. Give an example relating to guaranty of payment.
16. What is the safe rule as to whether there should be a writing or not?
17. What about previous negotiations, when the Articles of Agreement are once signed?
18. As to what points ought the Articles to be very clear?
19. Need a custom of trade be mentioned in them?
20. Give an example.
21. How about using legal phrases?
22. What is meant by executing an agreement in duplicate?
23. Need it be sealed or witnessed?
24. What difference, if it is sealed and witnessed?
25. What documents do require seals and witnesses?
26. What is the ordinary remedy, when an agreement is broken?

Questions on Chapter II.

1. What is a bond? Why is it so called?
2. How is it used, to secure performance of an agreement?
3. Give an example.
4. What are the two parts of a bond?
5. What is an executor?
6. What is an administrator?
7. What does "Peter Barlow *and his assigns*" mean?
8. Who are a man's heirs?
9. What if there is a slight default in performance? Does the whole sum become due?
10. Name some ordinary cases of agreement, in connection with which bonds are much used.
11. Name some kinds of officers who have to give bonds. What is the condition in such cases?
12. What is a receiver?
13. Explain the undertaking of a surety.
14. What is the benefit of taking a bond with surety?
15. What is meant by a surety "justifying?"
16. If the surety pays, what are his rights?
17. What if the "obligee" in the bond holds a pledge or a mortgage as well?
18. Give an example of this.
19. What is a recognizance?
20. Who is the "obligee" in a recognizance?
21. Name some purposes for which recognizances are used.
22. What if a prisoner, accused of stealing, cannot give such a recognizance as is required of him?
23. What is meant by releasing a prisoner on his own recognizance?

Questions on Chapter III.

1. In sales of what amount does the law generally require a writing?
2. Name some incidents which will dispense with the necessity of a writing.
3. A man sells goods for cash, and the buyer cannot at once pay cash, as agreed. What can the seller do?
4. What if the goods are perishable, such as oranges?
5. Can one who sells on credit, and is unpaid, go to the buyer's store when the account is due, and take back such goods as came from him?
6. What can he do?
7. What is an attachment?
8. When does an attachment issue? (As to this point, the local law must be examined.)
9. When do goods begin to be at the buyer's risk?
10. Give an example of this.
11. What is meant by warranting the title of goods?
12. Give an example, in which a warranty of title had to be made good.
13. It is said that there is *no implied warranty of quality*, in a sale of goods. What does this mean?
14. How far is that rule modified?
15. Give an example of this.
16. What is an express warranty?
17. Need such a warranty be in writing?
18. What kind of statement will amount to a warranty?
19. Give examples.
20. How about offers to do work, or supply goods, which will be entirely satisfactory?
21. How might this be expressed more safely?
22. Give examples.
23. What warranty is there in a sale by sample?
24. What if there is a secret defect in the sample itself?

Questions on Chapter IV.

1. In case of a breach of warranty as to quality, may the buyer decline to take the goods?
2. If he has received and paid for them, what can he do?
3. If he has not yet paid, what can he do?
4. Give examples.
5. What amount of damages ought usually to be given, in case a contract is not duly performed?
6. If the controversy terminates in a lawsuit, who determines the amount of damages?
7. When there is an agreement between the parties to a contract, as to how much shall be paid if it is not performed, is this agreement always enforced?
8. Point out a distinction, in such cases.
9. Give examples.
10. What is meant by stoppage *in transitu?*
11. To whom ought notice to be given?
12. What if the seller notifies the buyer?
13. Give an example of stoppage *in transitu.*
14. What is a common carrier?
15. If he receives goods and they are accidentally burned, who has to bear the loss?
16. How is it if a mob of rioters should plunder a freight train?
17. Or if a train of oil cars were struck by lightning?
18. What is included in "the act of God?"
19. What other causes of loss will excuse the common carrier?
20. If goods perish on the road, by "the act of God," does the seller, who sent them, or the buyer, who was to receive them, bear the loss?
21. What is a customary precaution, when purchased goods are frequently in transit?
22. When does the common carrier's peculiar risk terminate?
23. How far is he responsible, as a warehouseman?

24. Does the common carrier usually deliver goods at the address of the consignee, or not?
25. What difference does this make, as to his risk?
26. When does a steamboat cease to be a common carrier?

Questions on Chapter V.

1. What is meant by an insurance?
2. Who is called the *insurer?*
3. What kinds of insurance are there?
4. Describe the constitution of a joint stock insurance company.
5. What security has one who insures in such a company?
6. How is it, in the case of a mutual insurance company?
7. What is meant by a *policy* and a *premium?*
8. Does the insurance begin at once, or only when the policy is signed?
9. Can a man properly insure a house that does not belong to him?
10. Give an instance.
11. What if insured property is sold?
12. How is the company's consent usually expressed?
13. What may a common carrier insure?
14. If a building is mortgaged, who has an "insurable interest," and to what extent?
15. On what valuation may a retail merchant insure his stock?
16. What is "over insurance?"
17. For whose benefit may a man insure his own life?
18. When may he insure another person's life for his own benefit?
19. How about the case of debtor and creditor, as to life insurance?
20. What is to be avoided in all these transactions?
21. For how much may a life be insured? What exception?
22. How are warranties and representations, introduced into an application for insurance, regarded?
23. In filling up such an application, what precaution is desirable?

24. In case of an application for life insurance, how about a statement that the person is in "good health," or that his "habits" are "temperate?
25. If it is stipulated, in a fire insurance policy, that the insured may not "keep or have" any explosive materials in the house, how will such a stipulation be understood?
26. How as to a proviso, that the policy shall become void, if the premises are at any time "vacant or unoccupied?"
27. Has an insurance agent an unlimited power to waive the performance of stipulated conditions?
28. As to promptness of payment, how does the matter stand?
29. In what kind of insurance is prompt payment of premiums most important?

Questions on Chapter VI.

1. Why is the existence of negotiable paper necessary?
2. Why is a greenback worth anything?
3. If the United States government were to put in circulation ten times as many greenbacks as there now are, what would be the result?
4. How is it that no one ever sees an Ohio dollar, or a five dollar bill of the State of Wisconsin?
5. What does the term "negotiable paper" include?
6. What does "negotiability" mean?
7. How about a warehouse receipt?
8. If the maker of a promissory note has made a part payment to a prior holder of it, does this fact affect the present holder?
9. On what points does this matter depend?
10. Give an example. [The note made by Andrews.]
11. How did bills of exchange originate?
12. Define a bill of exchange.
13. How many parties are there, at first, to a bill of exchange, and by what names are they called?

14. In the example relating to London and Genoa, state who these parties respectively were.
15. Define a promissory note.
16. What differences are there between a promissory note and a bill of exchange?
17. What does "value received" mean?
18. If those words were left out, what then?
19. "Samuel Finley *or order*." What does that mean?
20. How would Finley give his order, in such a case?
21. Would any other words make the paper negotiable?
22. What is meant by endorsement?
23. What is a blank endorsement?
24. What is an endorsement in full?
25. Does the act of endorsement, by itself, transfer the paper?
26. When may commercial paper be transferred without any endorsement?

Questions on Chapter VII.

1. Is a note payable in wheat fully negotiable?
2. Is it negotiable in any sense?
3. As to what points must there be certainty of expression?
4. What of a note promising to pay so much as John Buchanan shall find to be due?
5. What if there be a discrepancy as to amount between the words and the figures?
6. If no time of payment be named, how then?
7. What of a promise to pay "when I am able," or "when my grandfather dies?"
8. What if no place of payment be mentioned?
9. If a note or a bill fails in certainty, on some particular point, is it on that account entirely worthless?
10. How about a promise to pay $500, "when my old mill is sold?"

11. How does the drawee of a bill signify his promise to pay it?
12. What is he then called?
13. Is a signature in pencil legally binding? Or a mere signing of one's initials?
14. What if a man cannot write?
15. If Solomon Miller asks Stephen Jackson to accept a bill in his name, how ought Jackson to sign?
16. How ought an executor or a trustee to sign commercial paper?
17. What about the use of hand-stamps for signatures?
18. Ought a note or a bill to be sealed?
19. How as to a provision in a note, that, in case of an action at law to recover the amount, the maker will pay ten per cent. additional as attorney's fee? Is this good in your own State?
20. How does commercial paper usually originate?
21. What is accommodation paper?
22. What is the object of signing as an accommodation party?
23. When the paper gets into the hands of a merchant in the ordinary course of business, can the accommodation party defend on the ground that *he* received nothing for signing?
24. Can he ever defend on that ground, against any one?
25. If a note fails to mention interest, when does interest commence?
26. How as to a promise to pay $500, in 6 months, with interest?
27. How would you express a promise to pay $500, in 6 months, with 9 per cent. from date?
28. What is the ordinary rate of interest in the State in which you live?

Questions on Chapter VIII.

1. If a man holds a note which is already endorsed in blank, and transfers it by mere delivery, what responsibility does he assume?
2. What is the undertaking of one who transfers by endorsement and delivery?
3. What does the word *maturity* mean?

4. What are days of grace?
5. What if the last day of grace falls on a Sunday?
6. How may an endorser enlarge his liability?
7. How may he restrict it?
8. What does the expression "*without recourse*" mean?
9. Does it impair the negotiability of the instrument?
10. What is the effect of an endorsement, "pay to A. B. only?"
11. What is the meaning and effect of an endorsement "For collection?"
12. How are such collections usually made?
13. May a note or a bill be endorsed away for an amount less than the value expressed on its face?
14. Here is a note endorsed by the payee to Samuel Tyler, and by him to the holder, and it is just due. In what order are the parties liable on it?
15. If Samuel Tyler has to take it up, what right does he acquire?
16. What is the position of the acceptor of a bill?
17. In what order are the parties to a bill liable on it?
18. May a bill be accepted conditionally?
19. May it be accepted as to half of the amount called for?
20. Is the payee bound to take it, with either of these qualifications?
21. If he takes an acceptance in part, what should he do?
22. For what two things may a bill be protested?
23. When a bill falls due, is the acceptor to seek the holder, or is the holder to seek the acceptor? Give your reason.
24. Would it be proper for the holder simply to mail it to the acceptor, and request payment?
25. If the holder lives in Boston, and the acceptor in Chicago, what should the holder do?
26. At what place or house should demand be made?
27. What if the acceptor is out of town for a week?
28. What if he has changed his address?
29. What if the person in charge says the acceptor has "moved out West?"
30. What if a bill is made payable at the First National Bank?
31. If the bank is closed when the bill falls due, how then?

32. If the bill has been accidentally burned, does that circumstance relieve the holder from the duty of demanding payment?
33. If it has been lost, together with the holder's pocket-book, what ought the acceptor to do?
34. As regards the acceptor's responsibility, is prompt presentment for payment necessary?
35. In what respect is it important?
36. A bill containing a blank endorsement is stolen from the holder, and negotiated. What right does the new holder acquire?

Questions on Chapter IX.

1. Describe what is meant by protesting a bill.
2. Is it correct for the notary to certify that the holder made demand, and was refused?
3. Is anything further necessary, when the certificate of protest is signed and sealed?
4. Need a promissory note, which is duly presented and not paid, be protested?
5. What if there is no notary in the neighborhood?
6. After demand and refusal, who ought to be notified?
7. What form should the notice take?
8. With how much promptness ought it to be served?
9. If the holder gets to the endorser's office just after business hours, and finds it closed, is his last chance gone?
10. What if the endorser lives a hundred miles away?
11. If there is a mistake or omission in a note or a bill, what should the holder do?
12. Why should he not make the alteration himself?
13. What is meant by an immaterial alteration?
14. Give an example or two.
15. Give examples of alterations which are material.
16. What is the consequence of a material alteration made by the holder?

17. What if it be fraudulent, as well as material?
18. What if paper, which has been materially altered, goes into circulation?
19. What if a note has been raised in amount by the filling up of blanks?
20. What is a coupon bond?
21. By whom are such bonds issued?
22. To what disadvantage are holders of State bonds exposed?
23. What is a municipal bond?
24. Under what circumstances can such a bond be lawfully issued?
25. Name some purposes which will be considered public.
26. How about bonds given by a city to help a railroad?
27. Or to induce a company to locate a factory within the city limits?
28. What is a Bill of Lading?
29. What are the sender and receiver sometimes called?
30. How are Bills of Lading transferred?
31. To what extent are they negotiable?
32. What is a warehouse receipt?
33. Does the statute of your State take any notice of warehouse receipts?
34. What is a certificate of deposit?
35. What is a bank note?

Questions on Chapter X.

1. What is a bank check?
2. Wherein does it resemble a bill of exchange?
3. Wherein does it differ from a bill of exchange?
4. What is a "post-dated" check?
5. What is the use of post-dating a check?
6. Give an example of this.
7. How can payment of a check be stopped?
8. Why is delay in presenting a check dangerous?
9. What amounts to prompt presentment?
10. What if the bank is at a distance?

11. If the holder is a week late in presenting the check, and finds that there are no longer any funds of the drawer in the bank, what can he do?
12. What if the check was payable on the 18th, and the holder forgot to present it until the 29th, and the bank closed its doors on the 28th?
13. What is meant by certifying a check?
14. What is the effect of this transaction?
15. To what other document is a certified check equivalent?
16. What great difference is there between the acceptance of a bill and the certifying of a check, so far as the further liability of the drawer is concerned?
17. Who may certify a check on behalf of the bank?
18. Describe the duties of a bank cashier.
19. What is a teller?
20. When is the act of certifying worthless?
21. If the bank pays a forged check, who has to bear the loss? The bank or he whose name has been forged?
22. Would any circumstance alter this rule?
23. Ought the teller to pay a check, when the body of it is not in the drawer's hand writing?
24. What if the check has been skillfully raised?
25. Give an example, showing the danger of signing checks in blank, and so leaving them.
26. When a debtor gives his creditor a check for the amount of the debt, does that act constitute payment?
27. What is meant by "legal-tender?"
28. Is a check "legal-tender?"
29. What does the term strictly include?
30. If a promissory note falls due, and the maker offers his check in payment, what precaution is sometimes useful?
31. Ought an agent for the collection of what is due on a negotiable instrument to take a check in exchange for it?

Questions on Chapter XI.

1. What is an "unsecured debt?"
2. What is meant by guaranteeing payment?
3. Is any formality necessary, to render a guaranty binding on the guarantor?
4. What are "Statutes of Limitations?"
5. If a creditor has dunned his debtor every quarter, does that keep the debt from being outlawed?
6. *Within what time, in your own State, can an action be brought on a sale of merchandise?*
7. What circumstances will revive the debt for a new period?
8. What is an attachment?
9. What must the creditor do before the attachment issues?
10. When does an attachment usually issue? Under what circumstances?
11. *How is this in your own State?*
12. What is an execution?
13. Who conducts this proceeding?
14. What is taken first?
15. What is meant by personal property?
16. What is an exemption?
17. *Is there any homestead exemption in the State in which you live?*
18. What is meant by waiving an exemption?
19. *In your own State, can a debtor lawfully waive his exemption?*
20. If a debtor has little or nothing, is it ever advisable to prosecute a claim against him?
21. If he has moved into another State, without leaving any property behind him, is a judgment, pronounced in the State he has left, good for anything?
22. A judgment is said to be a lien on the real estate of the judgment debtor. What does that mean?
23. *To what extent is this the case in your own State?*
24. Explain by an example what an ordinary lien is.
25. If possession is given up, what becomes of the debt and of the lien?

26. Who have liens, besides those who make repairs of articles left with them for that purpose?
27. What is a factor?
28. What is meant by a mechanic's lien?
29. How is such a lien acquired?
30. *What persons, in your own State, have such a lien?*
31. Explain what is meant by garnishment.

[The questions here printed in italics can only be answered by examining the local statutes. They are all of great practical importance.]

Questions on Chapter XII.

1. What is a partnership?
2. What may the partners severally contribute?
3. If there is no special agreement as to the division of profits, how are they to be distributed?
4. Need an agreement for a partnership be in writing?
5. What points ought articles of agreement to state in a definite manner?
6. Why is it desirable to be explicit as to the time during which the partnership is to last?
7. What provision is sometimes made as to the execution and endorsement of commercial paper?
8. If A., B., and C. form a partnership, and it is provided that no one but A. shall deal with commercial paper in the name of the firm, and nevertheless B. makes a note in that name, is the firm bound to pay the note?
9. A partnership involves mutual agency. What does this mean?
10. If one partner gives a note in the name of the firm, as payment for a quantity of furniture which he has bought for his own private house, and the furniture dealer presents it when due, can the firm be made to pay?
11. What circumstances would render the firm liable, on a note like that?
12. What is a dormant partner?

13. What are his rights and liabilities?
14. What is a nominal partner?
15. Can a majority of the partners introduce a new partner into the firm?
16. What effect has the death of one partner?
17. If the senior member of a firm has an invalid daughter, and dies, leaving a $20,000 interest in the firm to her, and the other partners assent, does this make her a partner?
18. If partners disagree concerning the prudence of some proposed bargain, how is the difference to be settled?
19. If three partners out of four, in a wholesale grocery firm, wish to buy a quantity of boots and shoes which are to be sold off at auction, and to sell them again by the box, and the fourth partner is not willing to deal in anything but groceries, how then?
20. If one partner, on his own credit, borrows money, and it is used by the firm in its business, can the lender charge the firm with the debt, on that partner's failure to pay?
21. What things may any partner in a mercantile concern do in the name of the firm, so as to bind it?
22. Name some of those things which require the concurrence of all the partners.
23. What is meant by confessing judgment?
24. If one partner cannot pay his private debts, what can his creditors do?
25. If the firm cannot pay its debts, what can its creditors do?
26. With reference to this, what is meant by "the right of contribution?"
27. A partner in a machine shop owes $500, and cannot pay it. Can his creditors take in execution a machine in the shop, which is worth $500?

Questions on Chapter XIII.

1. Is a retiring partner responsible for the existing debts of the firm?
2. Under what circumstances is he responsible for debts of the firm, contracted after he went out?

3. What arrangement can sometimes be made, so as to relieve him from responsibility for the firm's old debts?
4. Need the creditors consent to this, unless they choose?
5. Name some ways in which a partnership can be dissolved.
6. If the business is being carried on so as to threaten great financial loss, and one partner out of four refuses to dissolve it, have the other three any remedy?
7. What is a "limited" or "special" partnership?
8. Can persons become limited partners in a firm, simply by agreeing to be regarded as such?
9. What is the "good-will" of a business?
10. If Mr. Dayton makes scissors, and sells them under his name, may Mr. Jenkins, who also makes scissors, stamp them as "Dayton's scissors?"
11. What would be the right of a second Mr. Dayton, under similar circumstances?
12. How does the principle of this matter apply to the titles of newspapers?
13. Of what may a trade-mark consist?
14. What is the purpose of a trade-mark?
15. Would "Skidmore's Griffin soap" be a good trade-mark?
16. How about "Desiccated Codfish?"
17. There must be something *arbitrary* in a trade-mark. What does this mean?
18. Can one person appropriate the symbol I X L, so as to exclude others from using it? Why is this?
19. What of a trade-mark which expresses an untruth?
20. What is meant by infringement?
21. What degree of similarity will constitute an infringement?
22. What court will restrain an infringement?
23. Can the injured party obtain any other remedy?

Questions on Chapter XIV.

1. What is a corporation?
2. If a corporation is composed of twelve persons, and does business, and two of the members die, does this affect the power of the corporation in any way?
3. What is meant by a municipal corporation?
4. Name some prominent examples of private corporations.
5. What is meant by a charter?
6. In many States no actual charter is given. What is done instead?
7. *What is the practice in your own State?*
8. What is meant by capital stock?
9. Can the shareholders lawfully resolve that there shall be no further call as to the unpaid portion of their shares?
10. Why is an agreement, that a stockholder may pay in anything except money, bad?
11. What is the duty of directors?
12. If the directors, though honest and diligent, are incompetent, what remedy is there?
13. In what case are they personally liable to the stockholders for losses sustained in the business?
14. Who are usually the active officers of a corporation?
15. What position do they occupy in relation to the stockholders and the directors?
16. What are by-laws, and who makes them?
17. What qualities are necessary to the validity of a by-law?
18. Give an example of an unreasonable by-law.
19. In making a contract with a corporation, what point should be carefully observed?
20. What two kinds of corporate meetings may be held?
21. What is the right of a stockholder, as to notice?
22. What is meant by a *quorum?*
23. Show under what circumstances the unanimous vote of thirteen members out of forty will control the whole body.

24. What danger results from the principle of allowing one vote for so many shares of stock?
25. Is there any difference between the liability of a stockholder, and that of the member of a mercantile firm, in case the concern should fail?
26. What is the difference between a stockholder and a bondholder?
27. Has a bondholder any vote in the meetings of the corporation?
28. Name some ways in which a corporation may come to an end.
29. What is frequently done when a corporation is running into debt?

Questions on Chapter XV.

1. What is a conveyance?
2. How is land conveyed by one person to another?
3. With what words does a deed usually begin?
4. What is the person executing it commonly called?
5. What are the usual words of conveyance?
6. What are "metes and bounds?"
7. If the distance named does not quite correspond with the boundary, which will be adhered to?
8. What is a quit-claim deed?
9. What is a general warranty?
10. What if a warranty of title is broken?
11. What is generally meant by a covenant that the property is free from incumbrances?
12. What is meant by the word dower?
13. If a married man executes a deed of land, and his wife does not unite in it, what consequence follows?
14. Has a husband any interest in his wife's land?
15. Can a parent convey away his land without consulting his children?
16. What is meant by the delivery of a deed?
17. What is necessary, besides signing, sealing and delivery?
18. Who usually takes acknowledgments?

19. What is necessary, in the acknowledgment of a married woman?
20. What is the object of the recording system?
21. What becomes of the deed itself?
22. What is a mortgage?
23. What is meant by foreclosure?
24. What if the debt is $1800, and the land only brings $1200?
25. What is meant by redemption?
26. What is a chattel mortgage?
27. As regards possession, wherein does a chattel mortgage differ from a pledge?
28. What has to be done with a chattel mortgage?
29. Is an unregistered chattel mortgage worth anything?
30. What precaution is desirable, in taking a mortgage on a stock of goods?
31. Can such a mortgage be made to cover goods bought afterwards, to replenish the stock in trade?
32. What is a bill of sale?
33. Distinguish this document from a chattel mortgage.
34. When should a bill of sale be registered?

Questions on Chapter XVI.

1. What is an account stated?
2. What is admitted by the person against whom the balance appears?
3. Can he in any way get rid of this admission?
4. Give some examples of agency.
5. How may an agent be appointed in ordinary cases?
6. What is meant by ratification?
7. Is the act of an agent always binding on the principal?
8. What if he does some injury to a third person?
9. What is arbitration?
10. What is the decision of the arbitrators called?
11. May two out of three hear and decide?
12. What if the arbitrators decline to hear all the testimony?

13. What is a reference?
14. What is a bailment?
15. If a man borrows five dollars, is that loan a bailment?
16. Give an example of a loan which would be a bailment?
17. How much care must the bailee exercise?
18. What is a broker?
19. What is a commission merchant? What is he sometimes called?
20. Point out some differences between the two.
21. Name some commission merchants in the place where you now are.
22. What should a broker do, when he has made a sale?
23. What are bought and sold notes?
24. Does a broker usually receive payment from the buyer?
25. What if a broker negotiates a sale to a man who cannot pay?
26. What if a commission merchant sells to a man who is insolvent?
27. What is a *del credere* commission?
28. When may a commission merchant sell on credit?
29. What does his lien amount to?
30. If parties compromise a dispute, may the question be re-opened in a court of law?
31. What if it turns out that they mistook their rights?
32. May criminal offenses be compromised?
33. Explain the operation of discounting a note.
34. On what does the rate of discount depend?
35. If a bank, in discounting a note, gets more than the highest legal rate of interest, is this considered usurious?
36. What is a letter of credit?
37. When is it general and when special?
38. How is it of use when a person travels abroad?
39. What form does it commonly take, in that case?
40. What is a power of attorney?
41. How is it construed?
42. What does this mean?
43. Give example.
44. How as to a power to superintend and manage property?
45. How as to a power to convey real estate?

FORMS OF DOCUMENTS.

ACCEPTANCE :

[See Bill of Exchange.]

AGREEMENT.

This Agreement, made the 15th day of May, A. D. 1893, between George Howard and Isaac Johnson, both of the city of Hartford, and State of Connecticut,

Witnesseth: The said George Howard undertakes to construct an ice-house for the said Isaac Johnson, at the northwest corner of said Johnson's property, known as 36 Market Street, in said city, within three months from this time, according to the plans and specifications hereto annexed. Said Howard is to supply all materials and labor, and said Johnson is to pay him, upon completion of said work, the sum of Two Hundred and Fifty (250) Dollars in U. S. Gold Coin.

In Witness Whereof, we have hereunto set our hands and seals, on the day and year above written.

GEORGE HOWARD.
ISAAC JOHNSON.

(As to witnessing and sealing, see Chapter I. These precautions are customary and proper, though not required by law.)

ARBITRATION.

Whereas a controversy has arisen between Kenneth Longley and Martin Nelson concerning the non-performance by said Nelson of an agreement between them, made the 25th day of March A. D. 1894, for the delivery by said Nelson to said Longley of a certain traction engine at the stipulated price of Fifteen Hundred Dollars; and whereas the said parties desire to settle the controversy without a lawsuit:

Now Therefore the said parties agree to submit the said controversy to the decision of Owen Parsons, of this city; and they covenant each with the other that the amount of damages appraised by him for breach of the said agreement shall be final, and that they and each of them will abide by his decision thereupon.

In Witness Whereof, the said parties have hereto set their hands and seals, in the City of Cleveland, and State of Ohio, this 14th day of August, A. D. 1894.

KENNETH LONGLEY. [SEAL]
MARTIN NELSON. [SEAL]

(The same remarks apply here, as to witnessing and sealing. The addition of seals is desirable, because the word *covenant* is used in the law with reference to sealed instruments. This is not, however, necessary. The decision or "award" of the arbitrator is also usually given under seal, as in the following example.)

AWARD.

Whereas a certain controversy between Kenneth Longley and Martin Nelson, concerning an agreement made between them on the 25th day of March, A. D. 1894, was by them submitted to me, as arbitrator, on the 14th day of August, in the said year:

Now Therefore be it known: That I, Owen Parsons, after hearing evidence concerning said agreement and the breach thereof, and being acquainted with all facts material thereto, decide that Martin Nelson is indebted to Kenneth Longley in the sum o Seventy Five (75) Dollars, in gold, as damages for breach of said agreement; and this is my award, given the eleventh day of October, A. D. 1894, in the City of Cleveland, and State of Ohio.

OWEN PARSONS. [SEAL]

(In cases of importance, it is usual to select three or five arbitrators, and to agree to abide by the decision of the majority.)

ARTICLES OF PARTNERSHIP.

This Agreement, made the 23d day of May, A. D. 1894, between Quintus Randolph and Stephen Thomson, both of the City of Denver, and State of Colorado, *Witnesseth:*

The said parties hereby constitute themselves a copartnership under the firm name of Randolph and Thomson, for the period of six years from the present date, for the purpose of buying, selling and dealing in dry goods and fancy goods, in said city.

The said Randolph has contributed to the use of said partnership the sum of Twelve Thousand (12000) Dollars, and the said Thomson has contributed thereto the sum of Six Thousand (6000) Dollars; and it is agreed that they both shall give constant personal attention to the business of the same.

And it is further agreed that the books of the copartnership shall be kept by the said Thomson, as a part of his aforesaid undertaking, and that he shall strike a balance and render an account half yearly, at the close of the months of June and December; and that the profits of the business shall be divided in the following proportion, to wit: Three-fifths to said Randolph, and two-fifths

to said Thomson. And all negotiable paper which shall be made, accepted, or endorsed in the name of the firm, shall be signed in that name by the said Randolph only.

In Witness Whereof, the said parties have hereto set their hands and seals, on the day and at the place aforesaid.

QUINTUS RANDOLPH. [SEAL]
STEPHEN THOMSON. [SEAL]

(This agreement, also, ought to be witnessed, though the law does not require it. The articles of copartnership may be indefinitely varied by special provisions. Where the document is long, or the terms of the agreement complicated, legal assistance should be called in.)

BILL OF EXCHANGE.

[1.] $200. CHICAGO, January 8, 1894.

At sight, pay to the order of Alexander Burrell Two Hundred Dollars, and charge the same to the account of

To Ellis, Gray & Co., Richmond, Va. } CHARLES DOWNING.

[2.] $600. NEW ORLEANS, January 15, 1894.

At thirty days sight, pay to the order of Horace Irving Six Hundred Dollars, and charge the same to the account of

JAMES KINGSBOROUGH.

To Louis Martin, Galveston, Texas. }

(The first of these documents is a "sight-draft," and the second is a "time-draft." A bill commencing "Thirty days after date," that is, after the date of the bill itself, would also be a "time-draft," because payable at

a fixed day. Both of these documents are "foreign" bills of exchange. A bill drawn in Chicago on Peoria, or in Houston on Galveston, would be an "inland" bill. A bill drawn in an American city on a European city would, of course, be "foreign." The only practical difference is that protest is more necessary in case of a "foreign" than in case of an "inland" bill, when payment is refused.)

ACCEPTANCE.

This would not be necessary as to the sight draft drawn by Charles Downing, because Ellis, Gray & Co. are asked to pay immediately; but Mr. Martin should accept Mr. Kingsborough's draft by writing across the face of it:

Accepted, January —th, 1894,

LOUIS MARTIN.

He then hands it back to Mr. Irving, who keeps it until it falls due, or else endorses it away.

BILL OF SALE.

Know all Men by these Presents, that I, Thomas Upton of Knoxville, Tennessee, in consideration of the sum of Three Hundred (300) dollars to me in hand paid by Vincent Williams, of Chattanooga in said State, the receipt of which is hereby acknowledged, have sold and conveyed, and do by these presents sell and convey to said Vincent Williams, his executors, administrators, and assigns, the following personal property, to wit: (here it is to be particularly described, as in an inventory or catalogue.) And I

do hereby warrant the title to the said property to the said Vincent Williams, his executors, administrators, and assigns, against the lawful claims of all persons whatever.

Witness my hand and seal the 29th day of January, A. D. 1895.

THOMAS UPTON. [SEAL]

(This form might be shortened, by the omission of all reference to Mr. Williams's executors, administrators and assigns, without any practical disadvantages. The clause of warranty of title, though usual, is superfluous, because, as we have seen in Chapter III, the law implies such a warranty, when a sale is fairly made. The principal legitimate use of a Bill of Sale is to convey personal property which is at a distance from the owner, or which is so placed that he cannot actually deliver it to the buyer.)

BOND.

Know all Men by these Presents, that we, John G. Young, as principal, and Z. T. Adams, as surety, are held and firmly bound unto Benson Collier in the sum of Eight Thousand (8000) Dollars, to be paid to the said Benson Collier, his executors, administrators, and assigns: for the payment whereof we jointly and severally bind our heirs, executors, and administrators.

Now the condition of this Bond is such that, whereas the said Benson Collier has engaged the said John G. Young as his cashier and book-keeper for the term of one year from the present date, and the said John G. Young has accepted said employment, if the said John G. Young shall well, honestly, and faithfully perform the duties of the same, then this obligation is to be void, otherwise to be and remain in full force. Dated in the City of Boston and State of Massachusetts the 29th day of January, A. D. 1894.

JOHN G. YOUNG. [SEAL]
Z. T. ADAMS. [SEAL]

Sealed and delivered in the presence of us as witnesses:

DANIEL EATON.
FRANCIS GARDINER.

(The purpose of Mr. Collier in taking this bond is to secure himself against any possible fraud or negligence on the part of Mr. Young, who is about to take a responsible position in his store. The chief value of the bond consists in the fact that Mr. Adams, who signs as surety, is a man of position and wealth. Should Mr. Young abscond with $1500, Mr. Adams will not be made to pay Mr. Collier more than he has lost. See Chapter II.)

CHATTEL MORTGAGE.

Be it Known by these Presents, that I, Harrison Ives, of the City of St. Paul, State of Minnesota, being indebted to Jeremiah Knowles, of said city, in the sum of Seven Hundred and Fifty Dollars, with interest from the first day of March A. D. 1894, at the rate of eight per cent per annum, for the purpose of securing the payment of the said indebtedness, and of the interest thereon, do hereby convey, transfer, and assign to the said Jeremiah Knowles the personal property now to be described, that is to say: (Here follows an itemized description of the property, as in an inventory or catalogue.)

This conveyance is executed as a mortgage of the aforesaid property, upon condition that if the said Ives shall pay to the said Knowles the said principal sum of Seven Hundred and Fifty (750) Dollars within two years from the first day of March, A. D. 1894, and shall pay the annual interest thereupon as it falls due, then this conveyance is to be void; but if the said Ives shall fail to pay the said principal or the said interest as aforesaid, then the said Knowles shall have power to enter and take possession of the said

property, or any part thereof, and to sell the same, and to apply the proceeds of such sale to the payment of so much of the said indebtedness as shall be due when such sale is made, and to the discharge of all expenses incurred in making the sale.

In witness whereof, I have hereunto set my hand and seal this 1st day of July, A. D. 1894.

HARRISON IVES. [SEAL]

Executed in the presence of }
LEVI MORTIMER. }

(It may be prudent, in some cases, to provide that the creditor shall sell at public auction only, or to stipulate that the goods shall not be sold below an agreed valuation.)

CHECK.

No. 15. LOWELL, Mass., July 22, 1893.

The Manufacturers' National Bank.

Pay to N. B. Osborne, or order, $87.50.
Eighty-seven and 50-100 Dollars.

PHILIP QUACKENBUSH.

(This check might have been made payable to N. B. Osborne, *or bearer*; but it would then be subject to this disadvantage, that in case of Mr. Osborne's losing it, some dishonest person might get possession, and present it. Checks should always be drawn "to order," for the sake of greater safety, either as in the form here given, or "Pay to the order of so and so." The "No. 15" refers to a corresponding number to be marked on the stub of the check, which ought also to contain a memorandum of the amount, date and payee. The bank will deface the check when paid, and return it to the depositor when his account is made up.

CONTRACT.

[See Agreement.]

DEED OF CONVEYANCE OF LAND.

[See Chapter XV.]

(If this conveyance is to be merely a quitclaim deed, it should run thus, after the commencement:—"the receipt of which is hereby acknowledged, the said Adam Bell doth Convey, Release, and Quitclaim unto the said David Gray all his estate, right, title, and interest in and to that piece of land known as, etc." If it is intended that the grantor should convey with warranty, a clause to that effect must be added to the form given in Chapter XV, thus: "And the said Adam Bell doth covenant with the said David Gray, that he will, and his heirs, executors, and administrators shall WARRANT and DEFEND the same to the said David Gray, his heirs and assigns, against the claims of all persons claiming under the said Adam Bell;" or, more generally, "against the lawful claims of all persons whatever: **In witness whereof,** etc.")

DRAFT.

[See Bill of Exchange.]

ENDORSEMENT.

On the Bill of Exchange already drawn by Charles Downing on Ellis Gray & Co., Alexander Burrell is the payee and first endorser. If he simply writes his name across the back of the bill, he endorses in blank. He can endorse specially to Reuben Sanders by writing across the back of the bill—

Pay to the order of Reuben Sanders.
Alexander Burrell.

He can make a "restrictive endorsement" by writing—

Pay to Reuben Sanders only.
Alexander Burrell.

He can diminish his own liability by adding to either of these endorsements the words "*Without recourse.*"

He can increase his own liability by adding words which obviate the necessity of demand and notice; as, thus—

Alexander Burrell.
Demand and notice waived.

If he holds it until nearly due, and then sends it to a distance to be collected, he should endorse it—

Alexander Burrell.
(*For collection.*)

UNDERTAKING OF GUARANTY.

In Consideration of credit now to be given to Thomas L. Updike by Valentine Watkins, upon the purchase of one team of two horses, at the agreed price of one hundred and fifty dollars, I hereby guarantee the payment of the said price to said Watkins.

ANDREW BEAUMONT.

Reading, Pa., May 29, 1894.

(A guaranty in this form covers merely the particular purchase in question, and is said to be *limited.* If Mr. Watkins proposed to give Mr. Updike a general credit to the extent of $150, on condition of his finding a guarantor, the guaranty thus given would cover successive purchases up to that amount, and would be called *a continuing guaranty;* and the form of it might be as follows:)—

In Consideration of credit now to be given to Thomas L. Updike by Valentine Watkins, I guarantee the payment of such purchases as said Updike may make from said Watkins, to the amount of One Hundred and Fifty Dollars.

ANDREW BEAUMONT.

Reading, Pa., May 29, 1894.

SHORT LEASE.

This Agreement, made in duplicate the first day of May, A. D. 1894, between Cyrus Delano and Erasmus French, both of the City of Lexington and State of Kentucky,

Witnesseth: The said Delano leases to the said French, for the period of eighteen months from the date hereof, the brick dwelling-house known as No. 153 Jackson Street, in said city, with the appurtenances, for which the said French is to pay to the said Delano One Hundred and Seventy-Five Dollars per quarter, the first payment falling due on the first day of August next. And it is hereby agreed that said French shall not underlet or assign his term or any part thereof, and shall deliver possession of the premises at the end of the said term to the said Delano, in their present good order and condition, reasonable wear and tear excepted, and shall not be liable for rent in case of fire or other destruction of the premises occurring without his fault.

In Witness Whereof, the said parties have set their hands hereto, at the place aforesaid, the first day of May, A. D. 1894.

CYRUS DELANO,
ERASMUS FRENCH.

(This lease, like several documents already mentioned, may be sealed and witnessed, though that is not necessary. The provision about not "underletting" or "assigning" is to prevent the house from going into the hands of a new tenant, whom the landlord might not choose to accept. The clause can be left out, or modified by the words "without the consent of said Delano." The provision concerning fire is important, for the tenant's protection.)

MORTGAGE OF REAL ESTATE.

This Indenture, made the twentieth day of September, A. D. 1893, between Gregory Hastings and Isaac Jennings, both of the City of Milwaukee and State of Wisconsin,

Witnesseth, For the consideration hereinafter expressed, the said George Hastings doth GIVE, GRANT, BARGAIN, SELL AND CONVEY unto the said Isaac Jennings Lot number five (5), in Block number three hundred and eighty (380), of said city, together with the two-story dwelling house thereon standing, and all the appurtenances thereof:

To Have and to Hold unto the said Isaac Jennings and his heirs forever.

This Conveyance is intended as a mortgage to secure the payment of a certain promissory note whereof the following is a copy.

$2000.00 MILWAUKEE, Wisconsin, Sept. 20, 1893.

One year after date hereof, I promise to pay to Isaac Jennings, or order, Two Thousand Dollars in Gold.

GREGORY HASTINGS.

In witness whereof, the said mortgagor hath hereto set his hand and seal on the day and at the place aforesaid.

GREGORY HASTINGS. [SEAL]

Executed in the presence of us as witnesses:

KARL LINCK,
MILES NEVITT.

(While this short form is sufficient for ordinary purposes, the mode of draughting mortgages differs considerably in different States. A mortgage is usually given to secure a note or a bond, or a series of notes or bonds; and the security is said to be "collateral" to the indebtedness. A clause is frequently introduced, requiring the mortgagor to keep the property insured for the mortgagee's protection. Printed forms of deeds and mortgages can be had in every State of the Union. Although, as a rule, they are prepared with some degree of care, yet the person who takes a mortgage as security for any considerable amount should see that the instrument is drawn up by a lawyer on whom he can rely. The same remark applies to deeds of conveyance, articles of partnership, and other documents of importance. There is a truer economy in obtaining the benefit of advice and experience, than in taking risks.

A mortgage must be acknowledged before a notary public or other officer empowered to take acknowledgments. If the mortgagor is married, his wife must convey with him, or else (see Chapter XV) her dower right will be unaffected by the mortgage. In the form given above, it is assumed that Gregory Hastings is a single man.)

PROMISSORY NOTE.

The note just recited in the mortgage executed by Gregory Hastings furnishes our first example. The note might have been made payable to "Isaac Jennings, or bearer," and would be equally negotiable in that form. For the sake of greater safety (see remarks under title "Check"), commercial paper should be made payable to order.

A promissory note made by two or more persons together may be "joint," or "joint and several." When it reads "We promise to pay," the persons signing it agree to unite in making payment; and they must be sued together, if an action on the note is necessary.

In the following note, the signers not only agree to unite in making payment, but also undertake that each of them by himself will pay the amount when due, or rather that the holder may apply for payment to whichever of them he likes, apart from the other.

$1200.00 RALEIGH, N. C., Sept. 6th, 1894.

Six months after date, we jointly and severally promise to pay to the order of Oliver P. Quartley Twelve Hundred Dollars.

ROSWELL SHIPTON.
THOMAS UHLER.

$600 00 PORTLAND, Oregon, January 1, 1894.

On or before the first day of January, 1895, I promise to pay to the order of Robert Sinclair Six Hundred Dollars, with interest from date until paid at the rate of ten per cent per annum.

THEODORE ULMAN.

(Here the maker has the privilege of paying before the due date, and by so doing he can stop the running of interest.

SATISFACTION OF MORTGAGE.

Know all Men by these Presents, that I, Gregory Hawkins, of Seattle, in the State of Washington, being the mortgagee in a certain mortgage for the sum of two thousand dollars ($2000), made by Isaac Jewett, on the 3d day of September A. D. 1894, and recorded in book 14 at page 67 of the records of mortgages of Lewis county, in said State, covering the following described real property, to wit: the south half of block nine (9), in the city of Chehalis, and county of Lewis aforesaid, hereby certify that the said mortgage, and the indebtedness secured by it, are fully satisfied and discharged.

Witness my hand and seal, in the city of Seattle, this ninth day of December A. D 1896.

GREGORY HAWKINS. [SEAL]

Executed in presence of
LEWIS MORRIS.
NATHAN OSGOOD.

STATE OF WASHINGTON,
County of . . . . . } ss.

Before me, a Notary Public in and for the State of Washington, this ninth day of December A. D. 1896, *personally appeared* Gregory Hawkins, who is known to me to be the individual who executed the foregoing satisfaction of mortgage, and *acknowledged* to me that he executed the same freely and voluntarily. Witness my hand and *notarial seal* on the day and in the county in this certificate first mentioned.

PAUL ROGERS. [SEAL]
A Notary Public in and for the State of Washington.

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